Supreme Court, U.S.
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No:

IN THE

Supreme Court of the United States

UNITED STATE OF AMERICA,

Respondent,

vs.

JOSEPH O. SALADINO,

Petitioner,

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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208-562-1089

August 28, 2006

QUESTIONS PRESENTED

Petitioner raised several issues of law and precedent relative to personam and subject matter jurisdiction with the Ninth Circuit and the Court denied Petitioner's appeal and the motion for en banc hearing without comment regarding the jurisdiction issues raised. The issues of law and precedent presented herein have either not been addressed by the Court with the particularity presented herein or there is new evidence this Court should review which may reverse this Court's and lower Courts' prior rulings. The level of detail in the following questions and the particular nuances of the questions are required since, by the Court addressing said questions, there will be added clarity established which may eliminate misunderstandings and confusion with respect to future litigation. The questions for consideration are as follows:

1. Petitioner has been required to speculate with regard to the existence of a United States law which would "expressly" extend the authority of the Secretary to the fifty freely associated compact states ("several states") and said silence by U.S. Attorney's and the Courts is a denial of due process. With respect to said denial of due process issues, the questions are:

a. Is it a denial of Petitioner's right to due process for Petitioner to be required to speculate as to the meaning of U.S. laws thereby potentially subjecting his family and himself to prison and other personal damage when the Courts refuse to reveal the law (or the absence of said law) which "expressly" extends the authority of the Secretary to the several states with respect to 4 USC § 72.

b. Is it a denial of Petitioner's right to due process for over 20 U.S. Attorneys and several of the lower Courts to remain silent and refuse to responsively address the issues of personam and subject-matter jurisdiction raised by Petitioner in the Ninth Circuit with regard to 4 USC § 72.

2. Title 4 USC § 72 restrains all offices associated with the seat of government from exercising their authority

outside "the District of Columbia, and not elsewhere" unless Congress "expressly" extends an office's authority, directly and in unmistakable terms, to other specific locations. The questions relative to 4 USC § 72 are:

a. Has Congress, in fact, "expressly" extended the authority of the Secretary of the United States Treasury ("Secretary"), the Commissioner of Internal Revenue ("Commissioner") and the Internal Revenue Service ("IRS") to the several states in United States ("U.S.") law pursuant to 4 USC § 72?

b. When U.S. Attorney's and the Courts refuse to address the mandates of 4 USC § 72, is it unreasonable for Petitioner to assume that no law exists by which Congress has "expressly" extended the authority of the Secretary to the several states thereby establishing that Petitioner, as one who lives and works in one of the several states, has no duty with regard to Title 26 as cited by Respondent in the original complaint and challenged by Petitioner?

c. Can the Secretary, the Commissioner and the IRS, pursuant to 4 USC § 72, create an internal revenue tax liability against a Citizen in one of the several states when Congress has not "expressly" extended the authority of the Secretary and associated Title 26 ("IRC") laws, under which said liability was allegedly created, to the several states?

d. Does 48 USC § 1612(a) "expressly" extend the authority of the Secretary, with respect to "chapter 75 of subtitle F of the Internal Revenue Code of 1954 [26 USCS §§ 7201 et seq.]," outside "the District of Columbia" to the Virgin Islands as mandated by 4 USC § 72?

e. Has Congress in a similar manner "expressly" extended the authority of the Secretary with respect to "chapter 75 of subtitle F of the [IRC]...", or any other sections of the IRC, to the several states?

f. Does IRC § 6700 (or any of the IRC sections cited by Respondent regarding jurisdiction) have any force and effect in the several states when Congress has not "expressly" extended the authority of the Secretary and said IRC sections by law to the several states?

g. Does Congress have a greater or lesser duty to so "expressly" extend the authority of the Secretary to the several states (areas over which Congress has limited jurisdiction) than as it does to "expressly" extended the Secretary's authority to the Virgin Islands in 48 USC § 1612(a) (an area over which Congress has greater or possibly, complete jurisdiction)?

h. By what statutory authority, pursuant to 4 USC § 72, does Respondent seek to make provisions of the IRC, cited by Respondent in the original complaint, applicable to Petitioner?

3. Recently Respondent has cited *Hughes v. U.S.*, 953 F.2d 531, 542-43 (9th Cir. 1991) in response to inquiries regarding the Secretary's authority in the several states pursuant to 4 USC § 72. The questions relevant to *Hughes* and 4 USC § 72 are:

a. Are the offices of Secretary, the Commissioner and the IRS each subject to the mandates of 4 USC § 72?

b. Does IRC § 7621, as cited by the *Hughes* Court, "expressly" or "impliedly" extend the authority of the Secretary to the several states, pursuant to the mandates of 4 USC § 72 and the definition of State in IRC § 7701(10), when the office of Secretary is not referenced at all in § 7621?

c. Does IRC § 7621, as cited by the *Hughes* Court, "expressly" or "impliedly" extend the authority of the office of the President to the several states pursuant to the mandates of 4 USC § 72 and the definition of State in IRC § 7701(10)?

d. Is the IRS an Agency of the U.S. and thereby subject to the mandates of 4 USC § 72; notwithstanding the contrary claims by U.S. Attorney's, in the *Diversified Metal Products v. T-Dow Company Trust, Internal Revenue Service, and Steve Morgan* case as cited herein, that the IRS is NOT an agency of the U.S.?

e. If the IRS IS an agency of the U.S., does the *Hughes* Court, in error, attempt to extend the authority of the IRS outside "the District of Columbia" (Washington, D.C.) without citing a U.S. law by which Congress actually "ex-

pressly" extends the authority of the Secretary to the several states?

f. Has the President established "internal revenue districts" in the several states pursuant to IRC § 7621 and as implied by the *Hughes* Court?

g. If "internal revenue districts" do not exist in the several states because either the President has not actually established said districts or the President has not approved the actual establishment of said districts by another office of government, then upon what basis in law does the Secretary administer and enforce internal revenue laws in internal revenue districts in the several states which do not exist?

h. Does 4 USC § 72 authorize the *Hughes* Court to extend the authority of the offices of the Secretary, the Commissioner or the IRS to the several states (outside the District of Columbia) when Congress has not done so or has Congress reserved that right to itself through the enactment of 4 USC § 72?

4. New evidence, as cited herein, was presented to the Ninth Circuit, relative to IRC § 83(a) and the regulations thereunder, to substantiate that previous denials by the lower courts were in error since the U.S. recently contended successfully with this Court that the term "any property" means all inclusively "all property" unless Congress explicitly excludes specific property by U.S. law. The questions relative to the issue of the § 83(a) deduction are:

a. Can the U.S. successfully contend with this Court that "any property" means all inclusively "all property" when Congress has not explicitly excluded specific property as the U.S. did in the *Monsanto* and other cases cited herein and then, in other tax related cases, contend successfully with the Courts (see *Talmage v. Commissioner* ("CIR"), S.Ct. #97-5299, Appendix F) that the term "any property" excludes labor as property from the § 83(a) deduction when neither Congress nor the Secretary have explicitly excluded labor as property from said deduction in U.S. law or the regulations thereunder?

b. If neither Congress (in U.S. law) nor the Secretary (through regulations) have excluded the value of labor (cost) from the meaning of "any property" to be deducted from compensation for services rendered and returned to the "taxpayer" pursuant to IRC § 83(a) and the regulations thereunder, by what authority do the Courts and the IRS exclude the value of labor from the term "any property" relative to the § 83(a) deduction?

c. Since the *Murphy* Court rejected the governments contention that compensation with no "basis" is taxable, can the same arguments of "gain," as cited by *Murphy*, be applied to labor compensation in light of the § 83(a) deduction for the "value of any money or property" given in exchange for said compensation as contended by Petitioner herein?

d. Should the *Talmage* opinion be overturned in light of *Murphy, Monsanto* and the three other cases and evidence as cited herein by Petitioner?

5. IRC Chapter 1 imposes a tax on "the taxable income of **every** individual" as well as "married individuals" and "**every** head of household" or in other words, every individual on the planet, therefore Congress has not identified the subject of the IRC Chapter 1 tax. The Secretary, however, has created the subject of the IRC Chapter 1 income tax in the regulations beyond that articulated by Congress. The questions relative to this issue are:

a. Has Congress identified the subject of the IRC Chapter 1 tax within U.S. law—with any greater specificity than everyone on the planet—as it has in IRC Chapters 2, 21 and 24 as cited herein?

b. Does the Secretary have the authority to impose a tax on a specific class of individuals by independently identifying the subject of said tax by Treasury Regulation only (26 CFR §§ 1.1-1(a)(1) and 1.1-1(c)) when the Constitution and the 16th Amendment authorizes only Congress to lay and collect a tax?

c. If the Secretary is authorized to create the subject of the IRC Chapter 1 tax by regulation when Congress has not done so, then by what authority does the Secretary

determine the subject of the Chapter 1 tax?

d. Can the Secretary lay an income tax by naming a subject to the IRC chapter 1 income tax when Congress has not done so?

e. Can Respondent point to authorities naming as subject one with the political status and *situs* of the Petitioner?

f. Is the citizen in IRC §§ 1402(b) and 3121(e) really the same Citizen as defined in 26 CFR 1.1-1(c) [1]?

g. Is one who works for a private company within one of the several states rightfully deemed to be the employee of IRC § 3401(c)?

h. Is it reasonable for Petitioner to believe that until Congress "expressly" extends the authority of the Secretary to the several states or Congress names the Petitioner as subject of the IRC Chapter 1 tax, Respondent is powerless to even approach the Petitioner regarding any matter governed by the IRC for lack of personam and subject matter jurisdiction and statutory authority?

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[1] See Appendix B-10

PARTIES TO THESE PROCEEDINGS

The parties to this proceeding are named in the caption

TABLE OF CONTENTS

QUESTIONS PRESENTED i
PARTIES TO THESE PROCEEDINGS vii
TABLES OF AUTHORITIES ix
PETITION FOR A WRIT OF CERTIORARI 1
Court OPINIONS 1
JURISDICTION 1
RELEVANT STATUTORY PROVISIONS 1
STATEMENT 1
REASONS FOR GRANTING THE WRIT 3
In Summary 3
Petitioner's Right to Due Process has been denied 4
Congress has not authorized the Secretary in the Several States 7
Secretary Conceals lawful Right from Citizens 14
The Murphy v. IRS ruling supports Petitioner's contents herein 21
Secretary wrongfully creates subject of IRC § 1 tax 24
CONCLUSION 30

TABLES OF AUTHORITIES

Cases

Adair v. U.S., 208 U.S. 161, 172 (1908) 16
Aetna Ins. Co. v. Chicago R.I. & P.R.R., 229 F.2d 584 (10th Cir.) 3
Alves v. CIR, 734 F.2d 478, 481 (CA9 1984) 16, 21
Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 756 (1975) 26
Bowen v. Georgetown Univ. Hosp., 488 U.S. 204, 208 (1988) 7, 25
Boyd v. U.S., 116 U.S. 616, 635 4
Brown v. FDA, 153 F.3d 155, 160-167 (CA4 1998), aff'd 529 U.S. 120 (2000) 24
Butchers' Union Co. v. Crescent City Co., 111 U.S. 746, 757 (1883) 16
Caha v. U.S., 152 US 211 5
Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A., 511 U.S. 164, 173-175 (1994) 26
Chevron U.S.A., Inc. v. NRDC, 467 U.S. 837, 842, 104 S.Ct. 2778, 2781, 81 L.Ed.2d 694 (1984) 24
City of Lauden, Okla. v. Chapman, 257 F.2d 601 (10th Cir.) 2
Cohn v. CIR, 73 USTC 443, 446-47 (1979) 16, 21
Connally v. General Construction Co., 269 U.S. 385, 391 (1926) 6
Coppage v. Kansas, 236 U.S. 1 (1915) 16
Department of Housing and Urban Renewal v. Rucker, 535 U.S. 125, 130-31 (2002) 18, 19
Diversified Metal Products v. T-Dow Company Trust, Internal Revenue Service, and Steve Morgan ..... iv, 12
Ernst & Ernst v. Hochfelder, 425 U.S. 185, 213-14 (1976) 25
F & S Contr. Co. v. Jensen, 337 F.2d 160, 161-162, (10th Cir.1963) 2
Federal Trade Commission v. Raladam Co., 283 U.S. 643, 51 S.Ct. 587 (1931) 13
Foley Brothers, Inc. v. Filardo, 336 US 281 (1948) 5

Fort Stewart Schools v. FLRA, 495 U.S. 641, 654, 110 S.Ct. 2043, 2051, 109 L.Ed.2d 659 (1990) 20
Hely v. Ratta, 292 U.S. 263, 54 S.Ct. 700, 78 L.Ed. 1248. 3
Hicks v. U.S., 335 F.Supp. 474, 481 (Colo.1971) 16
Hughes v. U.S., 953 F.2d 531, 542-43 (9th Cir. 1991) ... iv, 8
INS v. Chadha, 462 U.S. 919, 953 n.16, 955 n.19 (1983). 7, 25
Klingler Electric Co. v. CIR, 776 F.Supp. 1158, 1164 at [1] (S.D.Miss. 1991) 16
Koshland v. Helvering, 298 US 441, 446-67 28
KVOS v. Associated Press, 299 U.S. 269, 57 S.Ct. 197, 200, 31 L.Ed. 183 (1936) 2
Landreth Timber Co. v. Landreth, 471 U.S. 681, 685 (1985) 25
Lanzetta v. New Jersey, 306 U.S. 451, 453 (1939) 6
MacNaughton v. CIR, 888 F.2d 418 (CA6 1989) 16, 21
Manhattan Equipment Co. v. Commissioner, 297 US 129, 134 28
Manhattan Gen. Equip. Co. v. Commission, 297 U.S. 129, 134 (1936) 25
Marbury v. Madison, 1 Cranch. 137, 177 (1803) (Marshal, C.J.) 4
McNutt v. General Motors Acceptance Corp., 289 U.S. 178, 56 S.Ct. 780, 80 L.Ed. 1135 2
Montelepre Systemed, Inc. v. CIR, 956 F.2d 496 at 498 (CA5 1992) 6, 16, 20
Olmstead v. United States, 277 U.S. 438, 471-485 (1928) 29
Papachristou v. City of Jacksonville, 405 U.S. 156, 162 (1972) 6
Pledger v. CIR, 641 F.2d 287, 293 (CA5 1981) 16, 21
Robinson v. CIR, 82 USTC 444, 459 (1984) 16
Schering Corp. v. Shalala, 995 F.2d 1103 (D.C.Cir. 1993) 20
Slaughterhouse Case, 83 U.S. 395, 419; 16 Wall. 36-130 (1873) 16
State of Rhode Island v. State of Massachusetts, 37 US 709, 718 (1838) 2
U.S. v. Alvarez-Sanchez, 511 U.S. 350, 357 (1994) ... 18, 19

U.S. v. Calamaro, 354 US 351, 359 28
U.S. v. Cartwright, 411 U.S. 546, 552 (1973) 16
U.S. v. Gonzales, 520 U.S. 1, 4-6 (1997) 18, 19
U.S. v. Lopez, 514 U.S. 549, 115 S.Ct. 1624, 1633 (1995) 4, 25
U.S. v. Monsanto, 491 U.S. 600, 607-611 and (syllabus) (1989) 18

Statutes

18 USC § 2383 14
18 USC § 2384 14
26 USC § 1 15
26 USC § 1001 20
26 USC § 1011 20
26 USC § 1012 20
26 USC § 107 15
26 USC § 1402(b) ..... vii, 26
26 USC § 212 20
26 USC § 3121(e) ..... vii, 26
26 USC § 3401(c) ..... vii, 27
26 USC § 61(a) 14, 15
26 USC § 62 15
26 USC § 63 15
26 USC § 6700 ..... iii, 1, 2
26 USC § 6701 2
26 USC § 7401 2
26 USC § 7402 2
26 USC § 7408 2
26 USC § 7621 ..... 3, 8, 9, 10, 13
26 USC § 7701(10) iv
26 USC § 7701(a)(10) 9
26 USC § 7801 8
26 USC § 7805 8
26 USC § 83(a) ..... v, vi, 1, 5, 6, 14, 16, 18, 20, 21
28 U.S.C. § 1746(1) 30
28 USC § 1254(1) 1
28 USC § 1340 2
28 USC § 1345 2

28 USC § 1391 2
28 USC § 297(b) 9
4 USC § 72.... ii, iii, iv, v, 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14
42 USC § 411(b)(2) 27
48 USC § 1612 ..... iii, iv, 1, 9

Regulations

19 CFR Part 101 10
26 CFR § 1.1001-1(a) 5
26 CFR § 1.1-1(a)(1) ..... vi, 1
26 CFR § 1.1-1(b) ..... vi, 1
26 CFR § 1.83-3(e), (f) 16
26 CFR § 1.83-3(g) 1, 5, 17
26 CFR § 301.7621-1 10
26 CFR 1.1-1(c) ..... vii, 4, 29
26 CFR 1.1402(b)-1(d) 26
26 CFR 31.0-2(a)(1) 27
26 CFR 31.3121(e)-1(b) 27
27 CFR § 70.150(b) 16

Public Law

P.L. 86-624, § 18(j) 9
P.L. 86-70, § 22(a) 9

Other Authorities

14th Amendment to the Constitution 25
16th Amendment to the Constitution ..... vi, 5, 24, 28
Article 1, Section 2, Clause 2 of the Constitution of the U.S. 8, 25
Black's Law Dictionary, 6th Ed. "Expressly." 2
Black's Law Dictionary, 6th Ed., "Arm's length transaction." 16
Black's Law Dictionary, 6th Ed., "Property." 16
Executive Order #10289 10

PETITION FOR A WRIT OF CERTIORARI

Petitioner Joseph O. Saladino respectfully petitions this Court for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Ninth Circuit in this case.

COURT OPINIONS

The opinion of the U.S. Court of Appeals for the Ninth Circuit for both the Dismissal (March 29, 2006) and the Denial of Appellant's Motion for en banc hearing (May 31, 2006) are unpublished. Both denials are included as Appendix A-1 and A2 respectively.

JURISDICTION

The judgment of the court of appeals was entered on March 29, 2006 denying Petitioner's appeal and ignoring the issues of jurisdiction raised by Petitioner. A timely petition for rehearing en banc was also denied on May 31, 2006 without any comment regarding the jurisdiction issues raised. This Court has jurisdiction pursuant to 28 USC § 1254(1).

RELEVANT STATUTORY PROVISIONS

4 USC § 72, 48 USC § 1612, IRC § 83(a), 26 CFR §§ 1.1-1(a)(1), 1.1-1(c)[2] and 26 CFR § 1.83-3(g) and others are cited at length in the Appendix.

STATEMENT

Respondent filed a civil action against Petitioner in the U.S. DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA ("USDC") on March 29, 2004 alleging crimes of fraud and false statements claiming that Petitioner had acted in violation of IRC §§ 6700 and 6701. Based on the alleged violations of IRC §§ 6700 and 6701 and the alleged jurisdiction of the Secretary, Respondent alleged that the Secretary had authority to obtain an in-

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[2] See Appendix B-10

junction against Petitioner in the several states based on the alleged jurisdiction of IRC §§ 7402 and 7408[3]. Based on the alleged authority of the Secretary for injunctive relief, Respondent alleged that the USDC had jurisdiction to issue said injunction based on 28 USC §§ 1340, 1345, and 1391[4]. Since there is no evidence in the record to substantiate that Congress has "expressly"[5] extended the authority of the Secretary to enforce said internal revenue laws within the several states—unless Respondent can show said law(s)—the Secretary has no authority or jurisdiction to initiate a civil action against Petitioner in the several states.

It is well settled by this Court that once jurisdiction is challenged, proof of jurisdiction is a burden upon the party asserting it.[6] Respondent has challenged the juris-

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[3] Sections 7401 and 7408 authorize an injunction to the Secretary to enforce internal revenue laws against Petitioner only if Congress has "expressly" extended the authority of the Secretary and IRC §§ 6700, 6701, 7402 and 7408 to the several states by law. (See 4 USC § 72).

[4] 28 USC §§ 1340, 1345 and 1391 are applicable to Acts of Congress relative to internal revenue laws and civil actions initiated by agencies [IRS] or officers [Secretary] of the U.S. against Petitioner only if Congress has respectively and "expressly" extended their authority to the several states by law. (See 4 USC § 72). Unless Congress has "expressly" extended the authority of the Secretary, with regard to IRC §§ 6700, 6701, 7402 and 7408, to the several states, the Secretary has no authority to initiate a civil action and the Courts have no jurisdiction to enforce said internal revenue laws against Petitioner in the several states pursuant to 4 USC § 72, 28 USC §§ 1340, 1345 and 1391.

[5] See Black's Law Dictionary, 6th Ed. "Expressly", see Appendix K.

[6] See *State of Rhode Island v. State of Massachusetts*, 37 US 709, 718 (1838); *KVOS v. Associated Press*, 299 U.S. 269, 57 S.Ct. 197, 200, 31 L.Ed. 183 (1936): "...[w]here the allegations...are challenged by the defendant in an appropriate manner, ***the plaintiff must support them by competent proof.***" See also *F & S Contr. Co. v. Jensen*, 337 F.2d 160, 161-162, (10th Cir.1963) (***"[I]t is now settled that when there is an issue as to the sufficiency of jurisdictional amount, the burden of providing jurisdiction is on the party asserting it.*** *City of Lauden, Okla. v. Chapman*, 257 F.2d 601 (10th Cir.); *McNutt v. General Motors Acceptance Corp.*, 289 U.S. 178, 56 S.Ct. 780, 80 L.Ed. 1135. Further more, statutes conferring jurisdiction...are to be strictly construed ***and doubts resolved against federal court's jurisdic-***

diction of the Secretary pursuant to 4 USC § 72 on numerous occasions only to have said challenges met with complete silence from Respondent and the Appellate Court, with respect to the mandatory restrictions upon the Secretary within the several states pursuant to 4 USC § 72.

REASONS FOR GRANTING THE WRIT

In Summary

The issues in this Petition are as follows:

1. Petitioner's right to due process has been denied/violated by Respondent and the Appellate Court have concealed and kept secret the Secretary's jurisdiction in the several states by their refusing to state what the law is regarding personam and subject matter jurisdiction respecting 4 USC § 72 and 26 USC § 83(a) (see Appendix B-7 and B 6 respectively) thereby forcing Petitioner to speculate as to the law by which Congress has authorized the Secretary to act within the several states.

2. That Petitioner has NOT found any U.S. law by which Congress has "expressly" extended the authority of the Secretary to the several states, pursuant to 4 USC § 72, and Respondent and the Appellate court continue an action against Petitioner without establishing personam and subject matter jurisdiction on the record.

3. The *Hughes v. U.S.*, 953 F.2d 531, 542-43 (9th Cir. 1991)[7] opinion, in error, states that 4 USC § 72 does not foreclose the IRS from acting outside Washington, DC when the purpose of 4 USC § 72 has exactly that purpose. Moreover, 26 USC § 7621[8], cited by *Hughes*, does not "expressly" extend the authority of the office of Secretary to the several states and there is no evidence that the President, pursuant to IRC § 7621, has ever established inter-

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Continued...

tion. *Aetna Ins. Co. v. Chicago R.I. & P.R.R.*, 229 F.2d 584 (10th Cir.); *Hely v. Ratta*, 292 U.S. 263, 54 S.Ct. 700, 78 L.Ed. 1248."

[7] See Appendix C.

[8] See Appendix B-5

nal revenue districts within the several states.

4. Petitioner contends that the USTC opinion, *Talmage v. CIR*, S.Ct. #97-5299, does not correctly decipher the meaning of "any money or property" (see 26 CFR § 1.83-3(g)) in light of four recent U.S. Supreme Court decisions cited herein and Petitioner's belief that the issue of basis does not enter into the § 83(a) equation and that consistency dictates that the *Talmage* opinion should be overturned.

5. There is no subject of the IRC chapter 1 tax identified by Congress and the Secretary has no constitutional or statutory authority to determine the subject of the IRC chapter 1 tax when Congress has not done so and the Secretary by Treasury Regulation 26 CFR 1.1-1(c) extends Chapter 1 beyond the intent of Congress thereby causing the Secretary to exceed his authority.

Petitioner's Right to Due Process has been denied

"It [is] the judiciary's duty 'to say what the law is' *Marbury v. Madison, 1 Cranch.* 137, 177 (1803) (Marshal, C.J.) ."[9] Thus, Petitioner has a right to know, and the Courts have a duty to say what the law is. The Appellate Court's silence is a denial of Petitioner's rights to due process thereby forcing him to speculate as to which law authorizes the Secretary in the several states.

As this Court well knows, it is a duty of the Court to protect Petitioner's rights. *Boyd v. U.S.*, 116 U.S. 616, 635 states that "...it is the duty of the courts to be watchful for the constitutional rights of the citizens, and against stealthy encroachment thereon."

It is not frivolous for Petitioner to ask what Act of Congress "expressly" extends the authority of the Secretary to the several states. This Court previously stated that "It is well established principle of law that all federal legislation applies only within the territorial jurisdiction of the United States unless a contrary intent appears [see 4 USC § 72]" [*Foley Brothers, Inc. v. Filardo*, 336 US 281

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[9] See *U.S. v. Lopez*, 514 U.S. 549, 115 S.Ct. 1624, 1633 (1995)

(1948)] and again in *Caha v. U.S.*, 152 US 211 this Court also states that:

> "The laws of Congress in respect to those matters do not extend into the territorial limits of the States, but have force only in the District of Columbia, and other places that are within the exclusive jurisdiction of the national government." (Emphasis added)

There is no evidence in the administrative or judicial record of the USDC and Appellate Courts in this case to rebut the maxims, facts and law as presented by Petitioner relative to the Secretary's jurisdiction in the several states pursuant to 4 USC § 72.

In all of Petitioner's actions, he has relied upon the following maxims/axioms:

1. Congress may lay and collect taxes, as authorized by the 16th Amendment[10]. Congress must name the subject of any income tax it imposes.

2. The law is perfect. All Americans have the right to access the law and to know of its proper application and operation, even the tax law.

3. The law must be complied with – all of it, even by the Secretary (and his alleged Delegates the Commissioner and the IRS), even 4 USC § 72, IRC § 83(a), 26 CFR §§ 1.83-3(g) and 1.1001-1(a)[11].

4. The law must be applied openly and with indifference.

5. Statutes and regulations are intrinsic evidence. To contradict a statutory claim one must either prove, 1) the statute is unconstitutional, 2) the interpretation of the statute is flawed, or 3) there exists applicable exceptions to the statute relative to the claim as made. Any other response is "frivolous".

6. *Expressio unius est exclusio alterius*/Clear language/Void for vagueness. By denying Petitioner access to U.S. law, he is deprived of access to an entire branch of government (Congress) as it relates to the Codes of the

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[10] See Appendix M.

[11] See Appendix B-11

U.S. (taxation without representation). The Court's silence evaporates one's rights to arrange his personal affairs according to law (IRS publications are not law).

7. Statutory definitions are not "inclusions." A definition ceases to be a definition if the term "includes" is interpreted as a term which expands the definition to elements not specifically mentioned. A definition excludes all non-essential elements by not listing them.

8. IRC § "83(a) explains how property received in exchange for services is taxed" [12] and this applies to all compensation for labor

9. The Fair Market Value ("FMV") of property is determined by an arm's length transaction. FMV equals contract value.

10. Cost is excludible or deductible from gross revenue. Labor is property, all property is cost under the law; labor's value is cost, not profit.

11. Only Congress writes the law. Administrative regulations can't deviate from statute because regulations aren't written by Congress.

The absence of judicial clarification[13] by the lower Courts and its failure or refusal, on two separate occasions, to decide the presence or absence of the law by which Congress has "expressly" granted leave to the Secretary to act within the several states and the void for vagueness doctrine require and force Petitioner to speculate as to his duty with respect to the Secretary's authority within the several states pursuant to the IRC and 4 USC § 72. [14] The consequences of said speculation, if Pe-

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[12] *Montelepre Systemed, Inc. v. Commissioner ("CIR")*, 956 F.2d 496 at 498 (CA5 1992).

[13] At no time have the lower courts addressed the issue of the Secretary's jurisdiction in the several states pursuant to 4 USC § 72.

[14] See *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972); *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939) ("**No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids**") (citations omitted); *Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926) ("**[A] statute which either forbids or requires the doing of**

titioner is wrong and the Courts refuse to state what the law is, could result in criminal conviction and prison for Petitioner and untold damage to him and his family.

Petitioner's inquiry is about whether Congress intended to subject Petitioner and Citizens within the several states to the IRC income taxes and other provisions therein. (See *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988) (stating that "[i]t is axiomatic that an administrative agency's power to promulgate legislative regulations is limited to the authority delegated by Congress"); *INS v. Chadha*, 462 U.S. 919, 953 n.16, 955 n.19 (1983) (providing that agency action "is always subject to check by the terms of the legislation that authorized it; and if that authority is exceeded it is open to judicial review" and "Congress ultimately controls administrative agencies in the legislation that creates them")). The evidence in U.S. law which demonstrates conclusively that the Secretary, in fact, has express leave from Congress to act within the several states, pursuant to 4 USC § 72, is of paramount importance to this case and petition.

Congress has not authorized the Secretary in the Several States

For over 2 years, the good name and rights of Petitioner have been smeared and violated by Respondent, the Courts and others by their concealing from Petitioner, through their silence, THE law by which Congress has "expressly" extended the authority of the Secretary to the several states pursuant to 4 USC § 72.[15] As a "Citizen of

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an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law") (citations omitted).

[15] Petitioner's demand has always been that Respondent and the Courts prove the Secretary's authority within the several states and in U.S. law pursuant to the mandates of 4 USC § 72 and the response from Respondent or the Courts has either been complete silence or references to Court rulings which do not show any U.S. law by which

the United States" (see FN[37] *infra*), Petitioner has a right to have public servants (Respondent) be responsive to the challenge made regarding the Secretary's jurisdiction. To date, over 20 U.S. Attorneys and the lower Courts have refused to address the issue with a responsive answer from U.S. law. Therefore, Petitioner can only speculate that there is no such law which "expressly" grants the Secretary authority in the several states.

Respondent has recently begun citing *Hughes v. U.S.*, 953 F.2d 531, 542-43 (9th Cir. 1991) in response to the jurisdictional challenges regarding the Secretary. The *Hughes* ruling claims that "4 USC § 72 does not foreclose the authority of the IRS outside the District of Columbia." The only reason given by the *Hughes* Court is that the President is authorized to establish internal revenue districts outside Washington, D.C.[16] This argument fails every aspect of the 4 USC § 72 litmus test as follows:

1. Establishing internal revenue districts outside Washington, D.C. is not the same as establishing said districts within the several states; especially in light of 4 USC § 72

2. 4 USC § 72 mandates that ALL offices associated with the government be "expressly" authorized to act within the several states. Authorizing the office of President in IRC § 7621 does not "expressly" authorize the office of Secretary when the Secretary is not even mentioned.

3. With few exceptions, it is the Secretary who is authorized by Congress to write all needful rules and regulations for the administration and enforcement of the IRC (See IRC §§ 7801, 7805) , therefore it is that Office which must acquire express leave by Congress to act within the

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Congress has "expressly" extended the authority of the Secretary to the several states.

[16] Congress has "expressly" extended the authority of the Secretary to the Virgin Islands with respect to IRC Chapter 75 and this area is obviously outside "the District of Columbia" but not remotely associated with the several states.

several states. The *Hughes* Court implies in error that IRC § 7621 is the "expressly" stated grant of leave issued by Congress as required under 4 USC § 72, claiming that the office of the President of the U.S. is somehow the same office as that occupied by the Secretary.

4. The term "State" as used in IRC § 7621 includes "the District of Columbia" (see IRC § 7701(a)(10))[17]. Even if "State" could be concluded to include the several states, this definition does not "expressly" extend the office of Secretary to the several states when the several states are not "expressly" mentioned in the meaning of "State" as used in § 7621 (see § 7701(a)(10)). A "definition" is a limitation upon the term defined (See any dictionary). Petitioner claims, without rebuttal, that Congress has limited the Secretary's authority to "the District of Columbia" and the Virgin Islands (see 48 USC § 1612; Appendix B-9), never having "expressly" granted the Secretary the statutory leave to exercise his authority in the several states.

5. Moreover, there is no evidence in the record of this case, in the *Hughes* case or in any other case to establish the material fact that the President has established said internal revenue districts[18] in the several states? How-

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[17] Under this definition, Alaska and Hawaii were removed from applicability upon receiving freely associated compact state status (See P.L. 86-624, § 18(j); P.L. 86-70, § 22(a)). The several states are "countries" (See 28 USC § 297(b)).

[18] The *Hughes* Court implies that the President's (Secretary's alleged "implied") authority outside Washington, D.C. pursuant to IRC § 7621 somehow means that the Secretary's authority has been "expressly" extended to the several states when in fact all the Court said was that the IRS can act outside of Washington, D.C. Pursuant to 48 USC § 1612, Congress extended the Secretary's authority (and presumably the IRS) to the Virgin Islands. As a result of this misleading description of the IRS (Secretary's) authority, Respondent and all the other Courts continue to promulgate the error that *Hughes* extends the authority of the IRS to the several states which violates the letter and spirit of 4 USC § 72. To date, Respondent and the Appellate Court have not provided one U.S. law by which Congress has "expressly" extended the authority of the Secretary to the several states as man-

ever, there is evidence that the President established "customs districts," but no internal revenue districts have ever been established by the President within the several states. [19]

If no internal revenue districts have been established in the several states by the President[20], then out of which internal revenue districts established by the President within the several states does the Secretary administer and enforce internal revenue laws?

The law is by no means settled and there is confusion in the Courts as to applicability of 4 USC § 72 with respect to the Secretary's authority in the several states. As shown herein, neither IRC § 7621 or the *Hughes* opinion passes the litmus test of 4 USC § 72.

For the *Hughes* court to be correct when it states that "4 U.S.C. § 72 does not foreclose the exercise of authority by the IRS outside the District of Columbia", one of two material facts must be true, either:

1. The IRS IS an Agency of the U.S. and the IRS, the Commissioner and the Secretary are all somehow NOT subject to the mandates of 4 USC § 72. If this true, by what authority can said offices of government and the Courts ignore the mandates of 4 USC § 72? Without the

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dated by 4 USC § 72 thereby forcing Petitioner to speculate that no said authority for the Secretary in the several states exists in U.S. law.

[19] The burden of proof that said districts exist and have been established by the President within the several states is upon Respondent and the Courts if they hope to establish jurisdiction on the record. Without said evidence in the record, Respondent and the Courts cannot assume that said districts exist and therefore cannot assume that jurisdiction exists.

[20] In 1998, via Executive Order ("E.O.") #10289, as amended, President William J. Clinton authorized the Secretary to establish revenue districts under authority of IRC § 7621. Although § 7621 is not listed in the Parallel Table of Authorities and Rules, E.O. #10289 is listed. The implementing regulations for said Executive Order are found in 19 CFR Part 101. Said regulation establishes *"customs collection offices"* in each state of the union; it does not establish "internal revenue districts". A note at 26 CFR § 301.7621-1 confirms that E.O. #10289 is the only authority for establishing revenue districts.

law which exempts said offices from the mandates of 4 USC § 72, the *Hughes* Court is in error and this case should be overturned; or

2. The IRS IS NOT an Agency of the U.S. [21], as con-

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[21] There exists other evidence that the IRS is not an Agency of the United States Government which Petitioner will brief upon request by the Court and which are summarized as follows:

1. The IRS does not show up in the list of Departments, Offices, Agencies and Bureaus listed in the Treasury as found in 31 USC § 301 et. Seq. (See Appendix E-3)

2. Petitioner can show that the law by which the IRS is appropriated funds to operate shows that it is not a service within the Department of the Treasury ("Treasury").

3. Evidence shows that the IRS is not able to spend Treasury appropriations for "Mission Critical" functions such as postage.

4. The IRS (along with other agencies "outside" the Treasury) is required to **reimburse** the Fiscal Service/ Financial Management Service (FMS) (a service within the Treasury, see 31 U.S.C.S. § 306(a), Appendix E4), for postage expended by the FMS on behalf of the IRS.

5. In 31 U.S.C. § 1301 (see Appendix E5) under "2. Applicability", an Agency within a department appropriation IS permitted by law to spend money not appropriated as long as said expenditures meet the mission of the spending agency within the Department to which funds have been appropriated.

6. Agencies which are not part of the Treasury are required to reimburse the Treasury/FMS for expenditures paid by the FMS on behalf of said "outside" agency. (see 31 U.S.C.S. § 306, Appendix C).

7. The IRS and the Department of Agriculture, both "outside" organizations to the Treasury, are required to reimburse the FMS for postage in the same way the Social Security Trust Funds are to reimburse the FMS for costs incurred in the preparation, posting and payment of Social Security Trust benefit payments. There is no such provision for Departments, Offices, Agencies and Bureaus within the Treasury to reimburse said Department for any such expenditure!

8. Also in 31 U.S.C. § 306 said reimbursement by the IRS is made for postage incurred by the FMS for making check payments on behalf of the IRS; a "Mission Critical" function such as postage is most certainly within the scope and mission of the IRS.

9. The fact that the Commissioner is under the direction and supervision of the Secretary does not overcome the fact

tended by two U.S. Attorneys (officers of the court) in the case of *Diversified Metal Products v. T-Dow Company Trust, Internal Revenue Service, and Steve Morgan*, (see Appendix E-2). If this is true then the *Hughes* Court is correct and 4 USC § 72 does not foreclose the IRS from operating outside "the District of Columbia" since 4 USC § 72 is only applicable to offices or agencies connected to the seat of government.[22]

Either the IRS IS an Agency of the U.S. and is somehow immune from and unaffected by the mandates of 4 USC § 72 or the IRS is NOT an Agency of the U.S. thereby making it immune from and unaffected by the mandates of 4 USC § 72. Petitioner has a right to have this Court clearly state the basis in law by which the Secretary, the Commissioner and the IRS are immune from and unaffected by the mandates of 4 USC § 72.

Several Court opinions have been cited by Respondent that state the IRS can exercise its authority outside Washington, D.C. Every case cited to date is off-point. Any "expressly" granted exception to the limitations of the Secretary's authority to "the District of Columbia, and not elsewhere," as mandated by 4 USC § 72, are to be found

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that the IRS is not an Agency of the U.S. or of the Treasury. It is apparent by this reimbursement policy that the IRS has its own appropriations apart from that of the Treasury. In addition, the reimbursements required of the IRS demonstrate that the IRS does not have Franking privileges as authorized by Congress in its Act of March 8, 1868 (See Appendix E-1).

10. Petitioner tends to agree with U.S. Attorneys RICHARDSON and WARD (See Appendix E-2) that the IRS is not an agency of the U.S. and not part of the Treasury Department. This evidence, and more, brings into question the nature of the IRS as it relates to Citizens in the several states.

[22] If the IRS is NOT an Agency of the U.S., then there is monumental fraud being committed by the IRS daily (a non-Agency of the U.S.) and Respondent daily against Citizens in the several states in violation of 4 USC § 72. In such a case this Court has a duty, pursuant to 18 USC § 4, to report and facilitate the criminal prosecution of all those responsible for said fraud.

in U.S. law and NOT the Courts.[23] Official powers granted by Congress cannot be extended by the Courts but rather only by Congress:

> "Official powers cannot be extended beyond the terms and necessary implications of the grant. If broader powers be desirable, **they must be conferred by Congress.**" *Federal Trade Commission v. Raladam Co.*, 283 U.S. 643, 51 S.Ct. 587 (1931) (Emphasis added)

To agree with the *Hughes* Court, this Court must find that the *Hughes* ruling and IRC § 7621 meet the criteria for "ALL" offices attached to the seat of government as mandated by 4 USC § 72 as follows:

1. The Office of the Secretary is "expressly" and not "impliedly" authorized by Congress in IRC § 7621;

2. The Office of the Secretary is "expressly" and not "impliedly" authorized by IRC § 7621 to exercise his authority within the several states;

3. The President has been "expressly" and not "impliedly" authorized by Congress in IRC § 7621 to establish internal revenue districts within the several states;

4. The President has, in fact, established said internal revenue districts within the several states; and

5. The Secretary (and consequently the Commissioner and the IRS), by law, is immune from and unaffected by the mandates of 4 USC § 72.

For the other Court rulings to be binding, said rulings must at the same time show THE law by which Congress has "expressly" extended the authority of the Secretary to the several states. For the lower Courts and Respondent to ignore U.S. law which controls WHERE the Secretary can exercise his authority, appears to be open rebellion and sedition against the laws of U.S. in violation of 18

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[23] The Courts can suggest that the IRS has authority outside "the District of Columbia" and within the several states but unless said opinions also cite the law by which Congress has "expressly" extended the authority of the Secretary to the several states, said opinions are exactly that "opinion" and have no weight when deciphering the jurisdiction of the Secretary within the several states.

USC §§ 2383 and 2384.

Without said evidence to the contrary in U.S. law, the following remains true and unrebutted by Respondent:

1. Congress has not "expressly" authorized the Secretary to exercise his authority within the several states.

2. Congress has not "expressly" authorized the Secretary to create an internal revenue tax liability against Citizens in the several states unless Congress has "expressly" so authorized the Secretary by law to act within the several states;

3. All of the codes and alleged jurisdiction and authority cited by Respondent are moot without the underlying law by which Congress has "expressly" granted the Secretary leave to act within the several states;

4. There are no income tax Administrative Remedies available to Petitioner without the underlying law by which Congress has "expressly" extended said administrative remedies to the several states;

5. The "Anti-injunction Act" does not apply to Petitioner without the underlying law by which Congress has "expressly" extended said Act to the several states;

The Courts do not have the authority to "expressly" extend the authority of the Secretary when Congress has not done so. Therefore, the *Hughes* ruling must be overturned because it is misleading, being used by Respondent to mislead the Courts and it does not meet the litmus test of 4 USC § 72.

Secretary Conceals lawful Right from Citizens

Even if Respondent can present a law by which Congress has, in fact, "expressly" extends the authority of the Secretary to the several states, Petitioner and other Citizens in the several states are yearly denied a rightful deduction as articulated by Congress in IRC § 83(a).

Citizens and all Tax Professionals generally determine what is to be included in "Gross Income" by starting with IRC § 61(a)[24] or line 7 of the 1040 form;

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[24] See Appendix B-4

IRC § 61(a) defines what constitutes "Gross Income." Once "Gross Income" is determined pursuant to IRC § 61(a), Citizens and Tax Professionals generally proceed to IRC § 62 to determine what can be deducted from "Gross Income" which, when deducted, leaves a balance called "Adjusted Gross Income." Once "Adjusted Gross Income" is determined, Citizens and Tax Professionals generally proceed to IRC § 63 to determine what further amounts can be deducted which, when deducted, results in a balance known as "Taxable Income." Once "Taxable Income" is determined, Citizens and Tax Professionals generally proceed to IRC § 1 to determine the tax liability.

However, Citizens and Tax Professionals rarely read and understand the first seven words of IRC § 61(a); "Except as otherwise provided in this subtitle." This is the subtle clue to Citizens and Tax Professionals that § 61 is the definition of "gross income" unless there is another definition of "gross income" in subtitle A. In fact, there are other definitions of "Gross Income" which supersede this IRC § 61(a) definition of "Gross Income"[25] in the IRC.

Pursuant to IRC § 61(a)(1), compensation for services is included in "Gross Income," EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE. This means that if another section of subtitle A provides for a different definition of "Gross Income" or specifically articulates what is to be included in or excluded from "Gross Income," then the § 61(a) definition is not applicable.

In fact, the Treasury Regulation 26 CFR §1.61-1(b),[26] which is applicable to 26 USC § 61(a), states that:

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[25] **For example** full time ministers of the gospel, pursuant to IRC § 107, can **exclude** from "Gross Income" the rental value of a home furnished to them by their church as part of their compensation (IRC § 107 states, "In the case of a minister of the gospel, **gross income does not include**—(1) the rental value of a home furnished to him as part of his compensation..." As one can easily see by § 107, a minister's home cannot be taxed under any circumstances, since IRC §§ 62 [adjusted gross income] and 63 [taxable income] both start from a value known as "Gross Income;" an amount which by law cannot include the rental value of a minister's home.

[26] See Appendix B-13

"...To the extent that another section of the Code or of the regulations thereunder, provides specific treatment for any item of income, **such other provision shall apply notwithstanding section 61 and the regulations thereunder.**" Therefore, § 83(a) overrides § 61 when it comes to determining the amount of federal "gross income" one has.

Citizens and Tax Professionals alike receive compensation for services actually rendered and consider it to be included in "Gross Income." In summary, IRC § 83(a) explains how property received in exchange for services rendered is taxed.[27] IRC § 83 applies to all compensation paid for both the services of corporations, and for the services of individuals.[28] Labor is property[29]. The fair market value ("FMV"") of property ("amount paid" or "labor") is established through the terms of an "arm's length transaction."[30] The language of IRC § 83(a) states that when compensation is received [in exchange] for services rendered, ONLY the "excess" of the "property" [compensation] over the "amount paid" [value of labor] in cost is to be included in "gross income" (see Appendix B-6).

The formula for "Gross Income" pursuant to IRC § 83(a) is:

- "Excess" = "Gross Income"; and

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[27] See *Montelepre Systemed, Inc. v. CIR*, 956 F.2d 496 at 498 (CA5 1992)

[28] See 26 CFR § 1.83-3(e) (Appendix B-14), (f); *MacNaughton v. CIR*, 888 F.2d 418 (CA6 1989) (Appx D-2); *Pledger v. CIR*, 641 F.2d 287, 293 (CA5 1981) (Appx D-3); *Alves v. CIR*, 734 F.2d 478, 481 (CA9 1984) (Appx D-4); *Klingler Electric Co. v. CIR*, 776 F.Supp. 1158, 1164 at [1] (S.D.Miss. 1991) (Appx D-5); *Robinson v. CIR*, 82 USTC 444, 459 (1984) (Appx D-6); *Cohn v. CIR*, 73 USTC 443, 446-47 (1979) (Appx D-7).

[29] See *Butchers' Union Co. v. Crescent City Co.*, 111 U.S. 746, 757 (1883); *Slaughterhouse Case*, 83 U.S. 395, 419; 16 Wall. 36-130 (1873); *Adair v. U.S.*, 208 U.S. 161, 172 (1908); *Coppage v. Kansas*, 236 U.S. 1 (1915); *Black's Law Dictionary*, 6th Ed., "Property."

[30] See 27 CFR § 70.150(b); *U.S. v. Cartwright*, 411 U.S. 546, 552 (1973); *Hicks v. U.S.*, 335 F.Supp. 474, 481 (Colo.1971); *Pledger v. CIR*, supra; *Black's Law Dictionary*, 6th Ed., "Arm's length transaction."

- "Excess" = ("property") minus ("amount paid") or
- "Excess" = (compensation) minus (value of labor).

The "amount paid" is defined in 26 CFR § 1.83-3(g)[31] as the definition of cost:

> "(g) Amount paid. For purposes of section 83 and the regulations thereunder, the term 'amount paid' refers to the value of any money or property [labor is property, see fn[29] *supra*] paid for the transfer of property [compensation] to which section 83 applies."

It is important to point out to the Court that the USTC opinion, *Talmage v. CIR*, S.Ct. #97-5299[32], relied on an error that IRC §§ 83 and 1001 address the "basis" of labor when in fact IRC §§ 83 and 1001 and the regulations thereunder do not consider the basis of the labor at all. The cost is defined as the "value" (FMV) of any labor or property and "basis" is not a consideration at all. Petitioner believes that this is a fatal flaw in the *Talmage* opinion and should therefore be reversed by this Court.

Furthermore, unlike the contentions in *Talmage*, Petitioner has not contended that "Wages are not income" as contended by Respondent, the Appellate Court and the Court of Claims. In fact, Petitioner asked the Appellate Court to cite where Petitioner had contended that "wages are not income" and again, the Court was completely silent and refused to corroborate its claim in its ruling.

The value of the "amount paid" [labor] is determined by what the employer paid [compensation] for the services rendered [labor]. 26 CFR § 1.83-3(g), which is all inclusive and includes "any money or property," and includes the "value" of labor since Congress has not excluded any particular property from this § 83(a) deduction.

26 CFR § 1.83-3(g) embraces intangible personal property as one's cost having only sold one's labor in exchange for compensation. In fact, in order to impose amounts which are not to be included in "Gross Income" upon Citizens, the Secretary/IRS must deny Citizens a right as ar-

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[31] See Appendix B-15

[32] See Appendix F.

ticulated by Congress in IRC § 83(a) and the regulations thereunder.

The law does not exclude any particular property, for which there is no basis, from cost. The cost equals the "value" of any and all property [labor] disposed to obtain other property [compensation], unless it is expressly excluded by Congress in law. The issue of basis never enters the equation.

One can determine the value (FMV) of one's labor by simply looking at the compensation one receives and determining its value. If one receives $1,000 for a week's labor, the value or FMV of that labor is $1,000.

Based on IRC § 83(a), the deduction [for the value of labor] is to be taken [returned to the "taxpayer"] from "such property" [compensation] to create the "excess" which ONLY then is included in "Gross Income." If there is no "excess" then there is no "Gross Income" and no "Taxable Income."

As used in said statutes and regulations, the terms "any" or "any property" are to be construed as all inclusive until Congress "expressly" provides an exception to support the notion that such terms are not all inclusive.

There is ample case law to support the principle of statutory construction which makes the term "any property" all inclusive; meaning that nothing is to be excluded by the word "any." This is confirmed by the following cases where the U.S. contends successfully that "any property" is all inclusive and means all property (see *U.S. v. Monsanto*, 491 U.S. 600, 607-611 and (syllabus) (1989); *U.S. v. Alvarez-Sanchez*, 511 U.S. 350, 357 (1994); *U.S. v. Gonzales*, 520 U.S. 1, 4-6 (1997); *Department of Housing and Urban Renewal v. Rucker*, 535 U.S. 125, 130-31 (2002) citing Gonzalez and Monsanto). Although these cases are not about taxes, the U.S. successfully argued in this Court that "any property" is all inclusive and means all property. The cases are summarized below and cited in the Appendix as indicated:

1. **1989** – *U.S. v. Monsanto*, 491 U.S. 600, 607-611 and (syllabus) (1989) *(In summary, see Appendix G)* -

Heroin manufacturer Monsanto argues that he should be allowed to keep enough money for attorney's fees, but the DOJ argues successfully that "**any property**" is all inclusive and therefore means the U.S. can seize any and all of Monsanto's property unless Monsanto can point to a specific exclusion of attorney's fees under the law (see Appendix G). Since the 1989 *Monsanto* decision regarding "any property," three very recent decisions cited below deal directly with the same question as to how to interpret the term "any"; is it all inclusive or subject to derogation? The inclusion of the lengthy excerpts is included in the Appendix and is intended to offer appreciable input upon the topic.

2. **2002** - *Department of Housing and Urban Renewal v. Rucker,* 535 U.S. 125, 130-31 (2002) citing *Gonzalez* and *Monsanto (citing Monsanto and Gonzales) (In summary, see Appendix H)* - U.S. argues successfully that "innocent owner" defense unavailable to co-tenant of low income housing who, although innocent, was subject to the statute's eviction of an all inclusive "any tenant" of a leased unit where prohibited activity had taken place. U.S. can evict the innocent tenant of low income housing unit which is the scene of prohibited behavior. Here Rehnquist in this unanimous 2002 decision (BEYER took no part) in *Department of Housing and Urban Renewal v. Rucker,* draws upon *Monsanto* for guidance in another instance hinged upon the interpretation of "any," affirming the claim made herein by Petitioner (see Appendix H).

3. **1997** - *U.S. v. Gonzales,* 520 U.S. 1, 4-6 (1997) *(In summary, see Appendix I)* - U.S. argues successfully that ***"any"*** in sentencing laws is all inclusive and therefore prevents the defendants from serving federal time concurrently with other sentences, U.S. argues for more jail time and gets more jail time for convict (see Appendix I).

4. **1994** – *U.S. v. Alvarez-Sanchez,* 511 U.S. 350, 357 (**1994**); *(In summary, see Appendix J)* – U.S. argues successfully that, **because the statute expressly provides for an exception to "any,"** that it is not all inclusive, that a delay should not preclude a criminal defendant's

confession or statement to state police from being used as evidence in federal case commenced thereafter. DOJ can use confession sought to be suppressed by criminal defendant (see Appendix J).

Thus it can be seen that any rendition of the term "any property" which does not include ALL PROPERTY is inconsistent with the four cases cited above wherein the U.S. argued successfully (and this Court agreed) that "any property" means all inclusively, ALL PROPERTY. There is no basis in law or statutory construction which allows the Secretary or the IRS to exclude the value of labor from the term "any property" when Congress has not done so. The Secretary confirms this understanding in the regulations by making it clear that the cost is the value of "**any** [all] money or property" given in exchange for said compensation and the Secretary, by said regulation, does not exclude the value of labor or any other particular type of property.

Moreover, the law and the regulations govern what the Secretary or his alleged Delegates can do with regard to the calculation of "Gross Income" as previously cited (see IRC §§ 83(a), 212, 1001, 1011, and 1012).

> "The regulations...now govern, and will continue to govern, the abbreviated application process. See *Fort Stewart Schools v. FLRA*, 495 U.S. 641, 654, 110 S.Ct. 2043, 2051, 109 L.Ed.2d 659 (1990). **No matter what an agency said in the past, or what it did not say, after an agency issues regulations it must abide by them.**" *Schering Corp. v. Shalala*, 995 F.2d 1103 (D.C.Cir. 1993)

It is certain that IRC § 83(a) applies to the calculation of an individual's compensation for labor for which only the "excess" is to be included in "Gross Income", as can be seen from the following Court ruling; *Montelepre Systemed, Inc. v. CIR, 956 F.2d 496 at 498 (CA5 1992)*: "**Section 83(a) explains how property received in ex-**

change for services is taxed."[33]

Thus it is clear that the term "any money or property" as articulated by the Secretary does not exclude labor as a particular type of property which is to be excluded from said IRC § 83(a) deduction.

Moreover, there are no Federal 1040 type returns, forms, schedules or worksheets ("Returns") which accommodate or make it possible for a Citizen or Tax Professional to complete a 1040 return and claim the rightful deductions for the value of one's labor as articulated by Congress in IRC § 83(a). The 1040 return incorrectly assumes on line 7 that all compensation and wages are included in "Gross Income" which is contrary to the first seven words of IRC § 61 and a violation of one's right to the lawful IRC § 83(a) deduction.[34]

The Murphy v. IRS ruling supports Petitioner's contents herein

Petitioner's contention that the IRC § 83(a) deduction applies to the value of one's labor without respect to any basis is further supported by the D.C. Appellate Court's

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[33] See also the following cases for which excerpts are included in Appendix D; *MacNaughton v. CIR*, 888 F.2d 418, 421 (CA6 1989): *Pledger v. CIR*, 641 F.2d 287, 293 (CA5 1981): *Alves v. CIR*, 734 F.2d 478, 481 (CA9 1984) See *Cohn v. CIR*, 73 USTC 443, 446-47 (1979)." *Klingler Electric Co. v. CIR*, 776 F.Supp. 1158, 1164 at [1] (S.D.Miss. 1991) *Robinson v. CIR*, 82 USTC 444, 459 (1984) *Cohn v. CIR*, 73 USTC 443, 446-47 (1979) Concurring with *Cohn*, *Alves*, see *Centel Communications Co. v. CIR*, 920 F.2d 1335, 1342 (CA7 1990) Annotations / Public Law.

[34] Since the IRC § 83(a) deduction is taken from compensation before it can be included in the "excess" ("gross income") of § 83(a), one could rightfully enter zero on line 7 of the 1040 return since said return(s) start with IRC § 61 and not IRC § 83(a). However, several Citizens have recently been convicted of filing false returns when taking the rightful § 83(a) deduction and entering zeros on the 1040. Therefore, one can only speculate that the Secretary and the IRS, without lawful justification, do not want Citizens to take their rightful § 83(a) deduction, as authorized by Congress, on the 1040 return—even though the Secretary has not excluded the value of one's "labor" from the property (cost) which one can deduct from compensation pursuant to § 83(a) and the regulations thereunder.

recent ruling in *Murphy v. IRS* (See Appendix L). The government argued in said case that Compensation for non-physical damages was income within the meaning of the 16th Amendment. They argued that since one had money after payment for damages whereas before they did not, said compensation was taxable.[35] The Court disagreed and held that since the compensation was a "return of capital", it was not income within the meaning of the 16th Amendment as follows:

> "In Murphy's view, the Court thereby made clear that the recovery of compensatory damages for a "personal injury" --**of whatever type** --is analogous to a "return of capital" and therefore is not income under the IRC or the *Sixteenth Amendment.*" (See *Murphy*, Appendix L).

Labor is property (see FN[29] *supra)* and the Murphy Court ruled that:

> "The Supreme Court has held the word "incomes" in the Amendment and the phrase "gross income" in *§ 61(a) of the IRC* are coextensive. *See Helvering v. Clifford, 309 U.S. 331, 334, 60 S. Ct. 554, 84 L. Ed. 788, 1940-1 C.B. 105 (1940) (§ 61* represents the "full measure of [the Congress's] taxing power"). When it first construed those terms in *Eisner v. Macomber, 252 U.S. 189, 207, 40 S. Ct. 189, 64 L. Ed. 521, 1920-3 C.B. 25,*

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[35] The Court states "Noting that the power of the Congress to tax income "extends broadly to all economic gains," *Comm'r v. Banks, 543 U.S. 426, 433, 125 S. Ct. 826, 160 L. Ed. 2d 859 (2005),* **the Government next maintains that compensatory damages "plainly constitute economic gain, for the taxpayer unquestionably has more money after receiving the damages than she had prior to receipt of the award."** On that basis, the Government contends Murphy's reliance upon footnote eight of *Glenshaw Glass* is misplaced; merely because the **Congress "has historically excluded personal injury recoveries from gross income, based on the make-whole or restoration-of-human-capital** theory, does not mean that such an exclusion is mandated by the *Sixteenth Amendment.*" Because the Supreme Court in *Glenshaw Glass* was construing "gross income" with reference only to the IRC, the Government argues footnote eight addresses only a now abandoned congressional policy, not the outer limit of the *Sixteenth Amendment.*" (See Appendix M).

T.D. 3010 (1920), the Supreme Court held the taxing power extended to any "**gain** derived from capital, from **labor**, or from both combined." Later, after explaining that [*15] *Eisner* was not "meant to provide a touchstone to all future gross income questions," the Court added that under the IRC -- and, by implication, under the *Sixteenth Amendment* -- the Congress may "tax all gains" or "accessions to wealth." *Commissioner v. Glenshaw Glass Co., 348 U.S. 426, 430-31, 75 S. Ct. 473, 99 L. Ed. 483, 1955-1 C.B. 207 (1955).*"

Therefore, the return of capital [or property], which is what one proffers to an employer as labor in return for compensation, is not income within the meaning of the 16th Amendment.[36] It does not matter whether the compensation comes from an insurance company, a Court Judgment or from an exchange of labor for compensation. In the end, it is only the "gain" which is taxable, as ruled by the *Murphy* Court. The *Murphy* Court did not agree that because one had more money after the compensation was paid than they had before meant that said compensation was taxable. In essence the government argued that the non-physical damage compensation had no basis just as the *Talmage* USTC argued. Just as there is no "basis" but only the "value" to be considered when calculating one's gross income in non-physical damage compensation, so the "value" of one's labor is to be deducted thereby making only the "excess" equal to one's gross income.

The *Murphy* Court also points out that:

> "In an opinion rendered to the Secretary of the Treasury on the question whether proceeds from an accident insurance policy were income under the IRC as it stood prior to the 1918 Act, the Attorney General stated:
>
> > 'Without affirming that the human body is in a technical sense the "capital" invested in an ac-

---

[36] See Murphy v. IRS, Appendix L, which states "...the Congress may 'tax all **gains**' or 'acessions to wealth.' *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 430-31 (1995).

> cident policy, in a broad, natural sense the proceeds of the policy do but substitute, so far as they go, capital which is the source of future periodical income. They merely take the place of capital in human ability which was destroyed by the accident. They are therefore "capital" as distinguished from "income" receipts.'"

The Attorney General regarded the destruction of one's human ability as a result of an accident as "capital" and not "income". In like manner, when one's labor is consumed by an employer, it is destroyed "as a source of future periodical income" and therefore likewise is not taxable; especially when "basis" never entered the discussion in the *Murphy* ruling.

Congress can write the law (see IRC § 61(a)) such that it appears that compensation is included in "gross income" when, in fact, IRC § 83 excludes [with no exception] the value of one's labor in the "excess" which then becomes "gross income". Petitioner contends that the reason Congress wrote IRC § 83 was to protect and preserve one's human investment ["source of future periodical income"] when an employer consumes [destroys the future use of] one's labor for compensation.

Secretary wrongfully creates subject of IRC § 1 tax

The 16th Amendment allows that Congress alone shall have the power to lay the taxes ultimately sought by the IRS, but the Respondent can produce only executive branch regulations to allege a liability.

As directed by *Brown v. FDA*, 153 F.3d 155, 160-167 (CA4 1998), aff'd 529 U.S. 120 (2000) and by *Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837, 842, 104 S.Ct. 2778, 2781, 81 L.Ed.2d 694 (1984), the traditional tools of statutory construction are used to ascertain congressional intent regarding whether Congress intended to embrace as subject to the IRC, chapters 1, 2, 21 and/or 24 and Peti-

tioner who is a National Citizen of the United States[37] and one who is domiciled and works in one of the several states.

First of all, agency power is "not the power to make law. Rather, it is 'the power to adopt regulations to carry into effect ***the will of Congress as expressed by the statute.***'" *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 213-14 (1976) (quoting *Manhattan Gen. Equip. Co. v. Commission*, 297 U.S. 129, 134 (1936)).[38] Thus, the inquiry must be whether Congress intended to subject Citizens of the United States (see FN[37] *infra*) who inhabit one of the several states to the IRC and the income taxes referenced therein (See *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988) (stating that "[i]t is axiomatic that an administrative agency's power to promulgate legislative regulations ***is limited to the authority delegated by Congress***"); *INS v. Chadha*, 462 U.S. 919, 953 n.16, 955 n.19 (1983) (providing that agency action "is always subject to check by the terms of the legislation that authorized it; and if that authority is exceeded it is open to judicial review" and "Congress ultimately controls administrative agencies in the legislation that creates them").

Pursuant to *Chevron* and *Brown*, the intent of Congress must be considered first because "[i]f the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress" (see *Chevron*, 467 U.S. at 842-43). Only if the intent of Congress is ambiguous can one defer to a permissible interpretation by the agency (see *Chevron*, 467 U.S. at 843).

The starting point in every case involving construction of a statute is the language of the statute itself. (See *Landreth Timber Co. v. Landreth*, 471 U.S. 681, 685 (1985) (quoting *Blue Chip Stamps v. Manor Drug Stores*, 421

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[37] Petitioner is a Citizen of the United States pursuant to the U.S. Constitution Article I, Section 2, clause 2 and the 14th Amendment and is not a federal statutory "citizen of the United States."

[38] See *U.S. v. Lopez*, 514 U.S. 549, 115 S.Ct. 1624, 1633 (1995).

U.S. 723, 756 (1975) (Powell, J., concurring)); *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 173-175 (1994)).

In the IRC, Congress has indeed named a subject of the tax or procedure in other commonly-applied portions of the Tax Code's statutory scheme, such as in chapter 2:

> IRC § 1402(b)[39] ...***An individual who is not a citizen of the United States*** but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa ***shall not, for the purposes of this chapter be considered to be a nonresident alien individual***.
>
> 26 CFR 1.1402(b)-1(d)[40] Nonresident aliens. A nonresident alien individual never has self-employment income. While ***a nonresident alien individual*** who derives income from a trade or business carried on within the United States, Puerto Rico, the Virgin Islands, Guam, or American Samoa... ***may be subject to the applicable income tax provisions*** on such income, such nonresident alien individual ***will not be subject to the tax on self-employment income***, since any net earnings which he may have...do not constitute self-employment income. ***For the purposes of the tax on self-employment income, an individual who is not a citizen of the United States but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, or...of Guam or American Samoa is not considered to be a nonresident alien individual***.

And in Tax Code chapter 21, Congress named a subject:

> IRC § 3121(e)[41] An individual who is ***a citizen of the Commonwealth of Puerto Rico*** (but not otherwise a citizen of the United States) ***shall be considered...as a citizen*** of the United States.

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[39] See Appendix B-1

[40] See Appendix B-12

[41] See Appendix B-2

26 CFR 31.0-2(a)(1)[42] The terms defined in the provisions of law contained in the regulations in this part shall have the meaning so assigned to them.

26 CFR 31.3121(e)-1(b)[43] ...The term "citizen of the United States" includes a citizen of the Commonwealth of Puerto Rico or the Virgin Islands, and, effective January 1, 1961, a citizen of Guam or American Samoa.

And in Social Security administration legislation Congress named a beneficiary:

42 USC § 411(b)(2)[44] The net earnings from self-employment, if such net earnings for the taxable year are less than $400. ***An individual who is not a citizen of the United States*** but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa ***shall not***, for the purpose of this subsection, ***be considered to be a nonresident alien individual***. In the case of church employee income, the special rules of subsection (i)(2) of this section shall apply for purposes of paragraph (2).

And in Tax Code chapter 24, Congress has named a subject of Form W-4 requirements:

IRC § 3401(c)[45] Employee.- For the purposes of this chapter, the term "employee" includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.

These are the only other chapters of the Tax Code, other than chapter 1, which the Respondent employs against or upon the individual, employee or self employed, as it relates to the imposition of taxes under the IRC and compensation for personal services performed by the Peti-

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[42] See Appendix B-16

[43] See Appendix B-17

[44] See Appendix B-8

[45] See Appendix B-3

tioner. None of these subjects, expressly named by Congress, happen to be the Petitioner.

In the chapters referenced above, all subjects of said taxes were found in statutes called "definitions," but in chapter 1 of the IRC there is no section called "definitions" which even remotely mentions a subject or "citizen" as found so clearly identified in these other chapters. These definitions are merely a simple expression or exercise of the power conferred upon Congress by the Constitution, Amendment 16, to wit:

> "The ***Congress shall have power to lay and collect taxes on incomes....***
>
> "***But the section contains nothing to that effect***, and, therefore, ***to uphold*** [IRS Commr's] addition to the tax ***would be to hold that it may be imposed by regulation, which, of course, the law does not permit***. *U.S. v. Calamaro*, 354 US 351, 359; *Koshland v. Helvering*, 298 US 441, 446-67; *Manhattan Equipment Co. v. Commissioner*, 297 US 129, 134." [46]

Again, while Congress has clearly identified a subject in other chapters of the IRC which impose taxes and which clearly do not pertain to the Petitioner but rather apply to people with other citizenships and occupations and their "income," Congress has at the same time never identified a subject of IRC chapter 1 tax[47].

Because executive branch officials have no legislative authority, their regulations cannot add to or detract from those enactments of Congress, our lawmakers. While Congress has taken the time to name a subject of taxes imposed by chapters other than chapter 1, it has not identified the subject of any tax imposed by IRC Chapter one.

The mention of citizenship in regulation alone is a grossly insufficient basis upon which to tax citizens who inhabit one of the several states. The Secretary has im-

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[46] See *CIR v. Acker*, 361 U.S. 87, 92 (1959).

[47] Citizenship mentioned in regulation alone (see 26 CFR 1.1-1(a), (b), (c)). This **regulation** is not the work or intent of Congress. Congress has never named the subject of any tax imposed under the provisions of the IRC Chapter one.

posed a tax on "citizens of the United States" through 26 CFR 1.1-1(c), and has done so without authority to do so—the authority to lay income tax having been reserved to Congress and Congress alone. Said regulation is null and void for derogation of statute.

Petitioner believes that there are substantial issues raised herein regarding personam and subject matter jurisdiction which Respondent and the lower Courts have refused to address. Petitioner hopes to obtain clarification as to what the law is so he will not be required to speculate as to the meaning of the law.

Mr. Justice Brandeis in his famous dissenting opinion in *Olmstead v. United States*, 277 U.S. 438, 471-485 (1928) states:

> "Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. ***Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy.*** To declare that, in the administration of the criminal law, the end justifies the means...***to declare that the Government may commit crimes in order to secure the conviction of a private criminal – would bring terrible retribution.*** Against that pernicious doctrine this Court should resolutely set its face."

//////////////////////

CONCLUSION

For the reasons set forth herein, Petitioner urges this Court to grant review in this case.

I have reviewed this Petition and the Appendix attached hereto and to the best of my knowledge and belief they are true and correct.

I further affirm under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

Executed this 28th day of August, 2006.

Respectfully submitted,

Joseph Oquendo Saladino

Supreme Court, U.S.
FILED
06-461 AUG 29 2006
No: OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

UNITED STATE OF AMERICA,

Respondent,

vs.

JOSEPH O. SALADINO,

Petitioner,

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

APPENDIX
TO THE
PETITION FOR A WRIT OF CERTIORARI

JOSEPH O. SALADINO
Pro se Litigant
9637 W. LITTLEWOOD DR.
BOISE, IDAHO 83709
208-562-1089

August 28, 2006

TABLE OF CONTENTS

APPENDIX A 1

ORDERS FROM THE NINTH CIRCUIT COURT OF APPEALS 1

1. *Order of March 29, 2006* 1
2. *Order of May 31, 2006* 3

APPENDIX B 4

MISCELLANEOUS STATUTES AND REGULATIONS 4

1. *26 USC § 1402(b)* 4
2. *26 USC § 3121(e)* 4
3. *26 USC § 3401(c)* 4
4. *26 USC § 61(a)* 4
5. *26 USC § 7621* 5
6. *26 USC § 83(a)* 5
7. *4 USC § 72* 6
8. *42 USC § 411(b)(2)* 6
9. *48 USC § 1612.* 6
10. *26 CFR § 1.1-1(a)(1) and (c)* 8
11. *26 CFR § 1.1001-1* 9
12. *26 CFR 1.1402(b)-1(d)* 10
13. *26 CFR 1.61-1(b).* 10
14. *26 CFR § 1.83-3(e).* 11
15. *26 CFR § 1.83-3(g)* 11
16. *26 CFR 31.0-2(a)(1)* 12
17. *26 CFR 31.3121(e)-1(b)* 12

APPENDIX C 13

HUGHES V. UNITED STATES, 953 F.2D 531, 535-36 (9TH CIR. 1992) [EXCERPT] 13

APPENDIX D 14

MISCELLANEOUS CASES CITED IN SUPPORT OF THE IRC § 83(A) DEDUCTION. 14

1. *Montelepre Systemed, Inc. v. C.I.R., 956 F.2d 496, 498 at [1] (CA5 1992)* 14
2. *MacNaughton v. C.I.R., 888 F.2d 418, 421 (CA6 1989)* 14

3. *Pledger v. C.I.R., 641 F.2d 287, 293 (CA5 1981)* 14
4. *Alves v. C.I.R., 734 F.2d 478, 481 (CA9 1984)*.... 14
5. *Klingler Electric Co. v. C.I.R., 776 F.Supp. 1158, 1164 at [1] (S.D.Miss. 1991)*..... 15
6. *Robinson v. C.I.R., 82 USTC 444, 459 (1984)*..... 15
7. *Cohn v. C.I.R., 73 USTC 443, 446 (1979)*..... 15

APPENDIX E **17**

EVIDENCE RELATED TO IRS NOT BEING AN AGENCY OF THE UNITED STATES GOVERNMENT 17
1. *The Act of Congress, March 8, 1868*..... 17
2. *Diversified Metal Products v. T-Dow Company Trust, Internal Revenue Service, and Steve Morgan; USDC District of Idaho, Case No. 93-405-E-EJL* 17
3. *Index to 31 USC § 301 et. Seq.* 18
4. *31 USC § 306. Fiscal Service*..... 19
5. *31 USC § 1301. Application*..... 19

APPENDIX F..... **22**

TALMAGE V. C.I.R., S.CT. #97-5299 [EXCERPT]..... 22

APPENDIX G **24**

U.S. V. MONSANTO, 491 U.S. 600, 607-611 AND (SYLLABUS) (1989) [EXCERPTS] 24

APPENDIX H..... **28**

DEPARTMENT OF HOUSING AND URBAN RENEWAL V. RUCKER, 535 U.S. 125, 130-31 (2002) [EXCERPTS] 28

APPENDIX I **30**

U.S. V. GONZALES, 520 U.S. 1, 4-6 (1997) [EXCERPTS].. 30

APPENDIX J..... **33**

UNITED STATES V. ALVAREZ-SANCHEZ, 511 U.S. 350, 357 (1994) [EXCERPT] 33

APPENDIX K **34**

BLACK'S LAW DICTIONARY, 6TH ED., "EXPRESSLY" 34

APPENDIX L **35**

MURPHY V. IRS 35

APPENDIX M **51**

16TH AMENDMENT TO THE CONSTITUTION 51

APPENDIX A

Orders from the Ninth Circuit Court of Appeals

1. Order of March 29, 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 29 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA, Plaintiff-Appellee v. JOSEPH O. SALADINO, individually doing business as Freedom and Privacy Committee, Defendant-Appellant	Case No. 05-55226 D.C. No. CV-04-02100-FMC MEMORANDUM

Appeal from the United States District Court
For the Central District of California
Florence Marie Cooper, District Judge, Presiding

Submitted March 8, 2006

Before: CANBY, BEEZER, and KOZINSKI, Circuit Judges

Joseph O. Saladino, individually and dba Freedom & Privacy Committee, appeals pro se from the district court's summary judgment in favor of the United States in its action brought under 26 U.S.C. §§ 7402 and 7408 to

enjoin Saladino and his organization from promoting, selling, and otherwise furthering, certain corporation sole and claim-of-right tax avoidance plans. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review for abuse of discretion the grant of an injunction, *United States v. Estate Pres. Servs.*, 202 F3d 1093, 1098 (9th Cir. 2000). We affirm.

Summary judgment was proper because Saladino failed to raise a genuine issue of material fact as to whether the tax avoidance plans he sold on his website constituted conduct subject to penalty under 26 U.S.C. §§ 6700 or 6700. Saladino's affidavit established that he was solely responsible for the website that sold the plans, and the Court of Federal Claims has ruled these plans and arguments in support of them meritless. *See Sumter v. United States*, 61 Fed. Cl. 517, 523 (2004); *Saladino v. United States*, 63 Fed. Cl. 754, 757-58 (2005) (sanctioning Saladino for advancing the same meritless arguments he presents here). This court has rejected similar arguments as well. See, e.g., *Olson v. United States*, 760 F.2d 1003, 1005 (9th Cir. 1985) (per curiam) (rejecting as frivolous taxpayer's contention that wages are not income); *Church of Scientology v. Comm'r*, 823 F.2d 1310, 1316-17 (9th Cir. 1987) (noting that churches are eligible for tax exempt status only if no part of their net earnings inures to the benefit of private individuals).

Accordingly, the district did not abuse its discretion in granting injunctive relief to the United States. *See United States v. Estate Pres. Servs.*, 202 F.3d at 1089 (concluding that an injunction should be granted if statutory requirements are met).

AFFIRMED.

No Signature

2. Order of May 31, 2006

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAY 31, 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA, Plaintiff-Appellee v. JOSEPH O. SALADINO, individually doing business as Freedom and Privacy Committee, Defendant-Appellant	Case No. 05-55226 D.C. No. CV-04-02100-FMC Central District of California, Los Angeles ORDER

Before: CANBY, BEEZER, and KOZINSKI, Circuit Judges

Judge Kozinski has voted to deny the petition for rehearing en banc, and Judges Canby and Beezer so recommended.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

The Petition for rehearing in banc is denied.

No further filings will be accepted in this closed appeal.

Not Signed

APPENDIX B

Miscellaneous Statutes and Regulations

1. **26 USC § 1402(b)**

   ..***An individual who is not a citizen of the United States*** but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa ***shall not, for the purposes of this chapter be considered to be a nonresident alien individual.***

2. **26 USC § 3121(e)**

   An individual who is ***a citizen of the Commonwealth of Puerto Rico*** (but not otherwise a citizen of the United States) ***shall be considered...as a citizen*** of the United States.

3. **26 USC § 3401(c)**

   (c) Employee
   For purposes of this chapter, the term "employee" includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.

4. **26 USC § 61(a)**

   (a) General definition

   Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

   (1) Compensation for services, including fees, commissions, fringe benefits, and similar items;

5. **26 USC § 7621**

Internal Revenue Districts

(a) Establishment and alteration

The President shall establish convenient internal revenue districts for the purpose of administering the internal revenue laws. The President may from time to time alter such districts.

(b) Boundaries

For the purpose mentioned in subsection (a), the President may subdivide any State, or the District of Columbia, or may unite into one district two or more States.

6. **26 USC § 83(a)**

§ 83. Property transferred in connection with performance of services

(a) General rule

If, in connection with the performance of services *[labor],* ***property*** *[compensation]* ***is transferred*** *to* ***any person*** *[employee] other than the person for whom such services are performed [employer],* ***the excess of***—

(1) the fair market value of such property *[compensation] (determined without regard to any restriction other than a restriction which by its terms will never lapse) at the first time the rights of the person having the beneficial interest in such property are transferable or are not subject to a substantial risk of forfeiture, whichever occurs earlier,* ***over***

(2) ***the amount*** *(if any)* ***paid*** *[labor]* ***for such property*** *[compensation],* ***shall be included in the gross income of the person*** *[employee]* ***who performed such services*** *[labor] in the first taxable year in which the rights of the person having the beneficial interest in such property are transferable or are not subject to a*

substantial risk of forfeiture, whichever is applicable. The preceding sentence shall not apply if such person sells or otherwise disposes of such property in an arm's length transaction before his rights in such property become transferable or not subject to a substantial risk of forfeiture. (Emphasis added)

7. **4 USC § 72**

"All offices attached to the seat of government shall be exercised in the District of Columbia, and not elsewhere, except as otherwise expressly provided by law."

8. **42 USC § 411(b)(2)**

The net earnings from self-employment, if such net earnings for the taxable year are less than $400. ***An individual who is not a citizen of the United States*** but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa ***shall not***, for the purpose of this subsection, ***be considered to be a nonresident alien individual.*** In the case of church employee income, the special rules of subsection (i)(2) of this section shall apply for purposes of paragraph (2).

9. **48 USC § 1612.**

Jurisdiction of District Court

(a) Jurisdiction

The District Court of the Virgin Islands shall have the jurisdiction of a District Court of the United States, including, but not limited to, the diversity jurisdiction provided for in section 1332 of title 28 and that of a bankruptcy court of the United States. The District Court of the Virgin Islands shall have exclusive jurisdiction over all criminal and civil proceedings in the Virgin Islands with respect to the income tax laws applicable to the Virgin Islands, regardless of the degree of the offense or of the amount involved, except the an-

cillary laws relating to the income tax enacted by the legislature of the Virgin Islands. Any act or failure to act with respect to the income tax laws applicable to the Virgin Islands which would constitute a criminal offense described in chapter 75 of subtitle F of title 26 shall constitute an offense against the government of the Virgin Islands and may be prosecuted in the name of the government of the Virgin Islands by the appropriate officers thereof in the District Court of the Virgin Islands without the request or the consent of the United States attorney for the Virgin Islands, notwithstanding the provisions of section 1617 of this title.

(b) General jurisdiction; limitations

In addition to the jurisdiction described in subsection (a) the District Court of the Virgin Islands shall have general original jurisdiction in all causes in the Virgin Islands the jurisdiction over which is not then vested by local law in the local courts of the Virgin Islands: Provided, That the jurisdiction of the District Court of the Virgin Islands under this subsection shall not extend to civil actions wherein the matter in controversy does not exceed the sum or value of $500, exclusive of interest and costs; to criminal cases wherein the maximum punishment which may be imposed does not exceed a fine of $100 or imprisonment for six months, or both; and to violations of local police and executive regulations. The courts established by local law shall have jurisdiction over the civil actions, criminal cases, and violations set forth in the preceding proviso. In causes brought in the district court solely on the basis of this subsection, the district court shall be considered a court established by local law for the purposes of determining the availability of indictment by grand jury or trial by jury.

(c) Criminal offenses; concurrent jurisdiction with local courts

The District Court of the Virgin Islands shall have concurrent jurisdiction with the courts of the Virgin Islands established by local law over those offenses against the criminal laws of the Virgin Islands, whether felonies or misdemeanors or both, which are of the same or similar character or part of, or based on, the same act or transaction or two or more acts or transactions connected together or constituting part of a common scheme or plan, if such act or transaction or acts or transactions also constitutes or constitute an offense or offenses against one or more of the statutes over which the District Court of the Virgin Islands has jurisdiction pursuant to subsections (a) and (b) of this section.

10. **26 CFR § 1.1-1(a)(1) and (c)**

(a) *General rule.* (1) Section 1 of the Code imposes an income tax on the income of every individual who is a citizen or resident of the United States and, to the extent provided by section 871(b) or 877

(c) *Who is a citizen.* Every person born or naturalized in the United States and subject to its jurisdiction is a citizen. For other rules governing the acquisition of citizenship, see chapters 1 and 2 of title III of the Immigration and Nationality Act (8 U.S.C. 1401–1459). For rules governing loss of citizenship, see sections 349 to 357, inclusive, of such Act (8 U.S.C. 1481–1489), Schneider v. Rusk, (1964) 377 U.S. 163, and Rev. Rul. 70–506, C.B. 1970–2, 1. For rules pertaining to persons who are nationals but not citizens at birth, e.g., a person born in American Samoa, see section 308 of such Act (8 U.S.C. 1408). For special rules applicable to certain expatriates who have lost citizenship with a principal purpose of avoiding certain taxes, see section 877. A foreigner who has filed his declaration of intention of becoming a citizen but who has not yet been admitted to citizenship by a final order of a naturalization court is an alien.

11. **26 CFR § 1.1001-1**

Computation of gain or loss.

(a) General rule. Except as otherwise provided in subtitle A of the Code, the gain or loss realized from the conversion of property into cash, or from the exchange of property for other property differing materially either in kind or in extent, is treated as income or as loss sustained. The amount realized from a sale or other disposition of property is the sum of any money received plus the fair market value of any property (other than money) received. The fair market value of property is a question of fact, but only in rare and extraordinary cases will property be considered to have no fair market value. The general method of computing such gain or loss is prescribed by section 1001 (a) through (d) which contemplates that from the amount realized upon the sale or exchange there shall be withdrawn a sum sufficient to restore the adjusted basis prescribed by section 1011 and the regulations thereunder (i.e., the cost or other basis adjusted for receipts, expenditures, losses, allowances, and other items chargeable against and applicable to such cost or other basis). The amount which remains after the adjusted basis has been restored to the taxpayer constitutes the realized gain. If the amount realized upon the sale or exchange is insufficient to restore to the taxpayer the adjusted basis of the property, a loss is sustained to the extent of the difference between such adjusted basis and the amount realized. The basis may be different depending upon whether gain or loss is being computed. For example, see section 1015(a) and the regulations thereunder. Section 1001(e) and paragraph (f) of this section prescribe the method of computing gain or loss upon the sale or other disposition of a term interest in property the adjusted basis (or a portion) of which is determined pursuant, or by reference, to section 1014 (relating to the basis of property acquired from a decedent)

or section 1015 (relating to the basis of property acquired by gift or by a transfer in trust).

12. **26 CFR 1.1402(b)-1(d)**

Nonresident aliens.

A nonresident alien individual never has self-employment income. While ***a nonresident alien individual*** who derives income from a trade or business carried on within the United States, Puerto Rico, the Virgin Islands, Guam, or American Samoa... ***may be subject to the applicable income tax provisions*** on such income, such nonresident alien individual ***will not be subject to the tax on self-employment income***, since any net earnings which he may have...do not constitute self-employment income. ***For the purposes of the tax on self-employment income, an individual who is not a citizen of the United States but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, or...of Guam or American Samoa is not considered to be a nonresident alien individual.***

13. **26 CFR 1.61-1(b).**

(b) *Cross references.* Cross references to other provisions of the Code are to be found throughout the regulations under section 61. The purpose of these cross references is to direct attention to the more common items which are included in or excluded from gross income entirely, or treated in some special manner. To the extent that another section of the Code or of the regulations thereunder, provides specific treatment for any item of income, such other provision shall apply notwithstanding section 61 and the regulations thereunder. The cross references do not cover all possible items.

14. **26 CFR § 1.83-3(e).**

(e) *Property.* For purposes of section 83 and the regulations thereunder, the term "property" includes real and personal property other than either money or an unfunded and unsecured promise to pay money or property in the future. The term also includes a beneficial interest in assets (including money) which are transferred or set aside from the claims of creditors of the transferor, for example, in a trust or escrow account. See, however, §1.83–8(a) with respect to employee trusts and annuity plans subject to section 402(b) and section 403(c). In the case of a transfer of a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection, or any undivided interest therein, the policy cash value and all other rights under such contract (including any supplemental agreements thereto and whether or not guaranteed), other than current life insurance protection, are treated as property for purposes of this section. However, in the case of the transfer of a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection, which was part of a split-dollar arrangement (as defined in §1.61–22(b)) entered into (as defined in §1.61–22(j)) on or before September 17, 2003, and which is not materially modified (as defined in §1.61–22(j)(2)) after September 17, 2003, only the cash surrender value of the contract is considered to be property. Where rights in a contract providing life insurance protection are substantially nonvested, see §1.83–1(a)(2) for rules relating to taxation of the cost of life insurance protection.

15. **26 CFR § 1.83-3(g)**

Meaning of certain terms:
(g) Amount paid. For purposes of section 83 and the regulations thereunder, the term "amount paid" refers to the value of any money or property paid for the

transfer of property to which section 83 applies, and does not refer to any amount paid for the right to use such property or to receive the income therefrom. Such value does not include any stated or unstated interest payments. For rules regarding the calculation of the amount of unstated interest payments, see §1.483–1(c). When section 83 applies to the transfer of property pursuant to the exercise of an option, the term "amount paid" refers to any amount paid for the grant of the option plus any amount paid as the exercise price of the option. For rules regarding the forgiveness of indebtedness treated as an amount paid, see §1.83–4(c).

16. **26 CFR 31.0-2(a)(1)**

The terms defined in the provisions of law contained in the regulations in this part shall have the meaning so assigned to them.

17. **26 CFR 31.3121(e)-1(b)**

The term "citizen of the United States" includes a citizen of the Commonwealth of Puerto Rico or the Virgin Islands, and, effective January 1, 1961, a citizen of Guam or American Samoa.

APPENDIX C

Hughes v. United States, 953 F.2d 531, 535-36 (9th Cir. 1992) [Excerpt]

LEXSEE 953 F.2D 531,AT 535

Richard C. Hughes; Joan C. Hughes, Plaintiffs-Appellants, v. United States of America; Commissioner of Internal Revenue, Defendants-Appellees. Richard C. Hughes; Joan C. Hughes, Plaintiffs-Appellants, v. Commissioner of IRS; United States of America; Steven R. High; Lena High; United Savings Bank, Defendants-Appellees.

No. 90-56150, No. 91-55195

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

953 F.2d 531; 1992 U.S. App. LEXIS 103; 92-1 U.S. Tax Cas. (CCH) P50,086; 69 A.F.T.R.2d (RIA) 472; 34 Fed. R. Evid. Serv. (Callaghan) 1318; 92 Cal. Daily Op. Service 300; 92 Daily Journal DAR 396

December 2, 1991 *, Submitted, Pasadena, California

January 9, 1992, Filed

[HN25] *4 U.S.C.S. § 72* does not foreclose the exercise of authority by the Internal Revenue Service outside the District of Columbia. The President is authorized to establish internal revenue districts [26 USC § 7621] for the purpose of administering the internal revenue laws, and these districts can be created outside of Washington, D.C. (Emphasis added).

APPENDIX D

Miscellaneous cases cited in support of the IRC § 83(a) deduction.

1. ***Montelepre Systemed, Inc. v. C.I.R.*, 956 F.2d 496, 498 at [1] (CA5 1992)**

   "***Section 83(a) explains how property received in exchange for services is taxed.***"

2. ***MacNaughton v. C.I.R.*, 888 F.2d 418, 421 (CA6 1989)**

   "The *Alves* court stated that the plain language of section 83 belied this argument because the "***statute applied to all property transferred in connection with the performance of services***" and because no reference is made to the term "compensation." *Id.* The court further concluded in *Alves* that "if Congress had intended section 83(a) to apply solely to restricted stock used to compensate employees, it could have used much narrower language." *Id.* at 481-82. Upon consideration, ***we agree with the interpretation advanced by the Alves court and, therefore, join the Ninth Circuit in holding that section 83 is not limited to stock transfers*** which are compensatory in nature."

3. **Pledger v. C.I.R., 641 F.2d 287, 293 (CA5 1981)**

   "The taxing scheme imposed by Congress more ***accurately reflects what taxpayer received as compensation*** than a scheme that taxes the taxpayer on merely a portion of the compensation."

4. ***Alves v. C.I.R.*, 734 F.2d 478, 481 (CA9 1984)**

   "The plain language of section 83(a) belies *Alve's* argument. ***Section 83(a) applies to all property transferred in connection with the performance of services.*** No reference is made to the term "com-

pensation." Nor is there any statutory requirement that property have a fair market value in excess of the amount paid at the time of transfer. Indeed, ***if Congress had intended section 83(a) to apply solely to restricted stock used to compensate its employees, it could have used much narrower language***. Indeed, Congress made section 83(a) applicable to all restricted "property," not just stock; to property transferred to "any person," not just to employees; and ***to property transferred "in connection with... services," not just compensation for employment***. See *Cohn v. Commissioner*, 73 USTC 443, 446-47 (1979)."

5. **Klingler Electric Co. v. C.I.R., 776 F.Supp. 1158, 1164 at [1] (S.D.Miss. 1991)**

   "***Section 83(a) applies to all property transferred in connection with the performance of services***."

6. ***Robinson v. C.I.R.*, 82 USTC 444, 459 (1984)**

   The legislative history of section 83 does not require the conclusion that the statute should be applied to tax-avoidance techniques only. To the contrary, the House and Senate reports specifically delineate transactions and transfers to which section 83 was not to apply and ***do not exclude from its purview contractual provisions that were not tax motivated***."

7. ***Cohn v. C.I.R.*, 73 USTC 443, 446 (1979)**

   "Petitioners rest their entire case on the proposition that Elovich and Cohn and/or Mega were "independent contractors" and not employees of the Integrated and that, therefore, section 83 does not apply to the acquisition of the shares from Integrated. They rely on the legislative history surrounding the statute to support their proposition that section 83 was intended to apply only to restricted stock transferred to employees. ***Respondent contends that the words "any person" in section 83(a) encompass independent contractors as well as employees***. We agree with

Respondent...We reject petitioner's argument. While restricted stock plans involving employers and employees may have been the primary impetus behind the enactment of section 83, ***the language of the section covers the transfer of any property transferred in connection with the performance of services*** "to any person other than the person for whom the services are performed." (Emphasis added.) The legislative history makes clear that Congress was aware that the statute's ***coverage extended beyond restricted stock plans for employees***. H.Rept. 91-413 (Part 1) (1969), 1969-3 C.B. 200, 255; S.Rept. 91-552 (1969), 1969-3 C.B. 423, 501. The regulations state that that section 83 applies to employees and independent contractors (sec. 1.83-1(a), Income Tax Regs.). There is no question but that, under the foregoing circumstances, ***these regulations are not "unreasonably and plainly inconsistent with the revenue statutes." Consequently, they are sustained***. (cites omitted)"

APPENDIX E

Evidence related to IRS not being an Agency of the United States Government

1. **The Act of Congress, March 8, 1868**

   "...who shall be charged with such duties in the bureau of internal revenue as may be prescribed by the Secretary of the Treasury, or as may be required by law, and who shall act as Commissioner of internal revenue in the absence of that officer, and exercise the privilege of **FRANKING** all letters and documents pertaining to the office of internal revenue."

2. **Diversified Metal Products v. T-Dow Company Trust, Internal Revenue Service, and Steve Morgan; USDC District of Idaho, Case No. 93-405-E-EJL**

   Note: Filed on or about November 18 or 19, 1993. File stamp is difficult to read.

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Attorneys for the United States of America

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

DIVERSIFIED METAL PRODUCTS, Inc., Plaintiff	)	Case No. 93-405-E-EJL
v.	)	UNITED STATES' ANSWER AND CLAIM
T-DOW COMPANY TRUST, INTERNAL REVENUE SERVICE and STEVE MORGAN, Defendant	)	

The United States of America, through undersigned counsel hereby responds to the numbered paragraphs of plaintiff's complaint as follows:

...

4. Denies that the Internal Revenue Service is an agency of the United States Government...

...

Respectfully submitted this 18th day of November, 1993.

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s/ Richard R. Ward
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3. Index to 31 USC § 301 et. Seq.

Title 31, SUBCHAPTER I—ORGANIZATION

§ 301. Department of the Treasury

§ 302. Treasury of the United States
§ 303. Bureau of Engraving and Printing
§ 304. United States Mint
§ 305. Federal Financing Bank
§ 306. Fiscal Service
§ 307. Office of the Comptroller of the Currency
§ 308. United States Customs Service
§ 309. Office of Thrift Supervision
§ 310. Financial Crimes Enforcement Network
§ 311. Office of Intelligence and Analysis
§ 312. Continuing in office

4. **31 USC § 306. Fiscal Service**

(a) **The Fiscal Service is a service in the Department of the Treasury.**

(b) The head of the Fiscal Service is the Fiscal Assistant Secretary appointed under section 301 (d) of this title.

(c) The Fiscal Service has a—

(1) Bureau of Government Financial Operations, having as its head a Commissioner of Government Financial Operations; and

(2) Bureau of the Public Debt, having as its head a Commissioner of the Public Debt.

(d) The Secretary of the Treasury may designate another officer of the Department to act as the Fiscal Assistant Secretary when the Fiscal Assistant Secretary is absent or unable to serve or when the office of Fiscal Assistant Secretary is vacant.

5. **31 USC § 1301. Application**

(a) Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.

(b) The reappropriation and diversion of the unexpended balance of an appropriation for a purpose other than that for which the appropriation originally was made shall be construed and accounted for as a new appropriation. The unexpended balance shall be reduced by the amount to be diverted.

(c) An appropriation in a regular, annual appropriation law may be construed to be permanent or available continuously only if the appropriation—

(1) is for rivers and harbors, lighthouses, public buildings, or the pay of the Navy and Marine Corps; or

(2) expressly provides that it is available after the fiscal year covered by the law in which it appears.

(d) A law may be construed to make an appropriation out of the Treasury or to authorize making a contract for the payment of money in excess of an appropriation only if the law specifically states that an appropriation is made or that such a contract may be made.

NOTES:

Transfers From Appropriation Accounts; Salaries of Temporarily Reassigned Employees

Pub. L. 105–277, div. A, § 101(f) [title V, § 510], Oct. 21, 1998, 112 Stat. 2681–337, 2681–385, as amended by Pub. L. 106–31, title V, § 5005(l), May 21, 1999, 113 Stat. 111, provided that: "Notwithstanding any other provision of law, hereafter—

"(1) no amount may be transferred from an appropriation account for the Departments of Labor, Health and Human Services, and Education except as authorized in this or any subsequent appropriation Act, or in the Act establishing the program or activity for which funds are contained in this Act [see Tables for classification];

"(2) no department, agency, or other entity, other than the one responsible for administering the program or

activity for which an appropriation is made in this Act, may exercise authority for the timing of the obligation and expenditure of such appropriation, or for the purpose for which it is obligated and expended, except to the extent and in the manner otherwise provided in sections 1512 and 1513 of title 31, United States Code; and

"(3) no funds provided under this Act or subsequent Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriations Acts shall be available for the salary (or any part thereof) of an employee who is reassigned on a temporary detail basis to another position in the employing agency or department or in any other agency or department, unless the detail is independently approved by the head of the employing department or agency."

APPENDIX F

Talmage v. C.I.R., S.Ct. #97-5299 [Excerpt]

LEXSEE T.C. MEMO 1996-114

STEPHEN V. TALMAGE, Petitioner v. COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 339-95.

UNITED STATES TAX COURT

T.C. Memo 1996-114; 1996 Tax Ct. Memo LEXIS 109; 71 T.C.M. (CCH) 2370

March 11, 1996, Filed

DISPOSITION: [*1] An appropriate order and decision will be entered for respondent.

...

Because the issues are purely legal, this case is ripe for summary judgment. Tax protester arguments like the claim that wages are not taxable income also suffice (as an alternative to dismissal, and in the absence of better argument) to justify summary judgment for respondent. Coleman v. Commissioner, 791 F.2d 68 (7th Cir. 1986) (wages not income), affg. an Order of this Court; Beard v. Commissioner, 82 T.C. 766, 772-774 (1984) (wages not income), affd. per curiam 793 F.2d 139 (6th Cir. 1986); Cornell v. Commissioner, T.C. Memo. 1983-370 (wages not income). Even if wages are, in effect, an exchange of equal value for value, they are nevertheless taxable income. Rowlee v. Commissioner, 80 T.C. 1111, 1121-1122 (1983); [*18] Rice v. Commissioner, T.C. Memo. 1982-129. And even if we apply section 1001 to determine petitioner's gain, his basis is defined under sections 1011 and 1012 as his cost, not fair market value. Since he paid nothing for his labor, his cost and thus his basis are zero. Rice v. Commissioner, supra. Consequently, even under section 1001, his taxable income from his labor is his total gain reduced by nothing, i.e., his wages.

Petitioner's primary argument n3 is that section 83, Property Transferred in Connection with Performance of Services, has the effect of exempting his wages from income tax because it requires us to apply section 1012, which specifies that cost should be used to determine the basis of property (unless the Code provides otherwise) to determine the extent to which wages constitute taxable income. Petitioner asserts that he "paid" for his wages with his labor and that section 83 allows the value of his labor as a cost to be offset against his wages, thereby exempting them from tax. Section 83 provides that property received for services is taxable to the recipient of the property to the extent of its [*19] fair market value minus the amount (if any) paid for the property. In attempting to equate his wages with property for which he has a tax cost, petitioner's argument is nothing more than a variation of the wages-are-not-income claim frequently advanced by tax protesters, and it is completely without merit. Gammon v. Commissioner, T.C. Memo. 1996-4; Santangelo v. Commissioner, T.C. Memo. 1995-468. Cf. Crow v. Commissioner, T.C. Memo. 1995-584. Petitioner's argument fails for the same reason that other protesters' arguments fail; the worker's cost for his services--and thus his basis--is zero, not their fair market value.

...

APPENDIX G

U.S. v. Monsanto, 491 U.S. 600, 607-611 and (syllabus) (1989) [Excerpts]

LEXSEE 491 U.S. 600,AT 609

UNITED STATES v. MONSANTO

No. 88-454

SUPREME COURT OF THE UNITED STATES

491 U.S. 600; 109 S. Ct. 2657; 105 L. Ed. 2d 512; 1989 U.S. LEXIS 3132; 57 U.S.L.W. 4826

March 21, 1989, Argued

June 22, 1989, Decided

...

"Section 853's ***language is plain and unambiguous. Congress could not have chosen stronger words to express its intent*** that forfeiture be mandatory than § 853(a)'s language that upon conviction a person "shall forfeit...***any property***" and that the sentencing court "shall order" a forfeiture. ***Likewise, the statute provides a broad definition of property which does not even hint at the idea that assets used for attorney's fees are not included***. Every Court of Appeals that has finally passed on this argument has agreed with this view. ***Neither the Act's legislative history nor legislators' post-enactment statements support respondent's argument that an exception should be created because the statute does not expressly include property to be used for attorney's fees, or because Congress simply did not consider the prospect that forfeiture*** [491 U.S. 601] ***would reach such property***...Moreover, ***respondent's admonition that courts should construe statutes to***

avoid decision as to their constitutionality is not license for the judiciary to rewrite statutory language. Pp. 606-611." [1]

"In determining the scope of a statute, we look first to its language." *United States v. Turkette*, 452 U.S. 576, 580 (1981). ***In the case before us, the language of § 853 is plain and unambiguous: all assets falling within its scope are to be forfeited upon conviction, with no exception existing for the assets used to pay attorney's fees – or anything else, for that matter.***

As observed above, § 853(a) provides that a person convicted of the offenses charged in respondent's indictment "***shall forfeit . . . any property***" that was derived from the commission of these offenses. After setting out this rule, § 853(a) repeats later in its text that upon conviction a sentencing court "shall order" forfeiture of ***all property*** described in § 853(a). ***Congress could not have chosen stronger words to express its intent*** that forfeiture be mandatory in cases where the statute applied, or broader words to define the scope of what was to be forfeited. ***Likewise, the statute provides a broad definition of "property" when describing what types of assets are within the section's scope: "real property . . . tangible and intangible personal property, including rights, privileges, interests, claims, and securities."*** 21 U.S.C. § 853(b) (1982 ed., Supp.V). ***Nothing in this all-inclusive listing even hints at the idea that assets to be used to pay an attorney are not "property" within the statute's meaning.***

Nor are we alone in concluding that the statute is unambiguous in failing to exclude assets that could be used to pay an attorney from its definition of forfeitable property. This argument, advanced by respondent here, see Brief for Respon-

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[1] See *U.S. v. Monsanto*, 491 U.S. 600 (syllabus) (1989).

dent 12-19, ***has been unanimously rejected by every Court of Appeals that has finally passed on it,*** as it was by the Second Circuit panel below, see 836 F.2d at 78-80; id. at 85-86 (Oakes, J., dissenting); ***even the judges who concurred*** on statutory grounds in the en banc decision ***did not accept this position,*** see 852 F.2d at 1405-1410 (Winter, J., concurring). We note also that the Brief for American Bar Association as ***Amicus Curiae 6, frankly admits that the statute "on [its] face, broadly cover[s] all property derived from alleged criminal activity and contain[s] no specific exemption for property used to pay bona fide attorneys' fees."***

Respondent urges us, nonetheless, ***to interpret the statute to exclude such property for several reasons.*** Principally, ***respondent contends that we should create such an exemption because the statute does not expressly include property to be used for attorneys' fees*** . . . In support, respondent observes that the legislative history is "silent" on this question, and that the House and Senate debates fail to discuss this prospect. But this proves nothing[.] ***The fact that the forfeiture provision reaches assets that could be used to pay attorney's fees, even though it contains no express provisions to this effect, "'does not demonstrate ambiguity'" in the statute: "'It demonstrates breadth.'"*** *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 499 (1985) (quoting *Haroco, Inc. v. American Nat. Bank & Trust Co. of Chicago*, 747 F.2d 384, 398 (CA7 1984)). ***The statutory provision at issue here is broad and unambiguous,*** and Congress' failure to supplement § 853(a)'s ***comprehensive phrase – "any property" – with an exclamatory "and we even mean assets to be used to pay an attorney" does not lessen the force of the statute's plain language."*** [2]

---

[2] See *Monsanto, Id.*, at 607-09.

"As we have noted before, such post-enactment views "form a hazardous basis for inferring the intent" behind a statute, *United States v. Price*, 361 U.S. 304, 313 (1960); instead, Congress' intent is "***best determined by [looking to] the statutory language that it chooses***," *Sedima, S.P.R.L., supra*, at 495, n.13. . . . ***Finally, respondent urges us, see Brief for Respondent 2029, to invoke a variety of general canons of statutory construction***, as well as several prudential doctrines of this Court, to create the statutory exemption he advances; among these doctrines is our admonition that courts should construe statutes to avoid decision as to their constitutionality. See, *e.g.*, *Edward J. DeBartolo Corp. v. Florida Gulf Coast Building & Constr. Trades Council*, 485 U.S. 568, 575 (1988); *NLRB. v. Catholic Bishop of Chicago*, 440 U.S. 490, 500 (1979). ***We respect these canons, and they are quite often useful in close cases, or when statutory language is ambiguous. But we have observed before that such "interpretative canon[s are] not a license for the judiciary to rewrite language enacted by the legislature."*** *United States v. Albertini*, 472 U.S. 675, 680 (1985). ***Here, the language is clear and the statute comprehensive: § 853 does not exempt assets to be used for attorney's fees from its forfeiture provisions.*** [3]

[3] See *Monsanto, Id.*, at 610-11.

APPENDIX H

Department of Housing and Urban Renewal v. Rucker, 535 U.S. 125, 130-31 (2002) [Excerpts]

LEXSEE 535 U.S. 125,AT 130

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, PETITIONER v. PEARLIE RUCKER ET AL., OAKLAND HOUSING AUTHORITY, ET AL., PETITIONERS v. PEARLIE RUCKER ET AL.

Nos. 00-1770 and 00-1781

SUPREME COURT OF THE UNITED STATES

535 U.S. 125; 122 S. Ct. 1230; 152 L. Ed. 2d 258; 2002 U.S. LEXIS 2144; 70 U.S.L.W. 4206

February 19, 2002, Argued

March 26, 2002, Decided *

...

"That this is so seems ***evident from the plain language of the statute.*** It provides that -

> each public housing authority shall utilize leases which . . . provide that . . . ***any*** drug-related criminal activity on or off such premises, engaged in by a public housing tenant, ***any*** member of the tenant's household, or ***any*** guest or other person under the tenant's control, shall be cause for termination of tenancy.

42 U.S.C. § 1437d(l)(6) (1994 Ed., Supp.V). The en banc Court of Appeals thought the statute did not address "the level of personal knowledge or fault that is required for eviction." 237 F.3d at 1120. ***Yet Congress' decision not to impose any qualification in the statute, combined with its use of the term "any" to modify "drug-related criminal activity," precludes any knowledge requirement.*** See *United States v. Monsanto*, 491 U.S. 600, 609 (1989). ***As we***

have explained, "the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" *United States v. Gonzales*, 520 U.S. 1, 5 (1997). Thus, ***any*** drug-related activity engaged in by the specified persons is grounds for termination, not just drug-related activity that the tenant knew or should have known about."

APPENDIX I

U.S. v. Gonzales, 520 U.S. 1, 4-6 (1997) [Excerpts]

LEXSEE 520 U.S. 1,AT 6

UNITED STATES, PETITIONER v. MIGUEL GONZALES, ORLENIS HERNANDEZ-DIAZ AND MARIO PEREZ

No. 95-1605

SUPREME COURT OF THE UNITED STATES

520 U.S. 1; 117 S. Ct. 1032; 137 L. Ed. 2d 132; 1997 U.S. LEXIS 1489; 65 U.S.L.W. 4157; 97 Cal. Daily Op. Service 1545; 97 Daily Journal DAR 2243; 10 Fla. L. Weekly Fed. S 326

December 11, 1996, Argued

March 3, 1997, Decided

...

"Our analysis begins, as always, with the statutory text. Section 924(c)(1) provides:

> Whoever, during and in relation to any...drug trafficking crime...for which he may be prosecuted in a court of the United States, uses or carries a firearm, shall, in addition to the punishment provided for such crime..., be sentenced to imprisonment for five years... Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with *any other term of imprisonment* including that imposed for the... drug trafficking crime in which the firearm was used or carried.

18 U.S.C. § 924(c)(1) (emphasis added). The question we face is whether the phrase "any other term of imprisonment" "means what it says, or whether it should be limited to some subset" of prison sentences, *Maine v. Thiboutot*, 448 U.S. 1, 4 (1980) -- namely, only federal sentences. ***Read naturally, the word "any" has an expansive meaning, that is, "one or some indiscriminately of whatever kind." Webster's Third New International Dictionary 97 (1976). Congress did not add any language limiting the breadth of that word, and so we must read § 924(c) as referring to all "term[s] of imprisonment," including those imposed by state courts.*** *Cf. United States v. Alvarez-Sanchez*, 511 U.S. 350, 358 (1994) (noting that statute referring to "any law enforcement officer" includes "federal, state, or local" officers); *Collector v. Hubbard*, 12 Wall. 1, 15 (1871) (***stating "it is quite clear" that a statute prohibiting the filing of suit "in any court" "includes the State courts as well as the Federal courts," because "there is not a word in the [statute] tending to show that the words 'in any court' are not used in their ordinary sense***"). There is no basis in the text for limiting § 924(c) to federal sentences.

In his dissenting opinion, JUSTICE STEVENS suggests that the word "any" as used in the first sentence of § 924(c) "unquestionably has the meaning 'any federal.'" *Post* at 14. In that first sentence, however, Congress *explicitly* limited the scope of the phrase "any crime of violence or drug trafficking crime" to those "for which [a defendant] may be prosecuted in a court of the United States." Given that Congress expressly limited the phrase "any crime" to only federal crimes, we find it significant that no similar restriction modifies the phrase "any other term of imprisonment," which appears only two sentences later and is at issue in this case. *See Russello v. United States*, 464 U.S. 16, 23 (1983) ("***Where Congress includes particular language in one section of a statute but omits it in***

another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion'").

The Court of Appeals also found ambiguity in Congress' decision, in drafting § 924(c), to prohibit concurrent sentences instead of simply mandating consecutive sentences. 65 F.3d at 820. Unlike the lower court, however, we see nothing remarkable (much less ambiguous) about Congress' choice of words. Because consecutive and concurrent sentences are exact opposites, Congress implicitly required one when it prohibited the other. This "ambiguity" is, in any event, beside the point, because this phraseology has no bearing on whether Congress meant § 924(c) sentences to run consecutively only to other federal terms of imprisonment.

Given the straightforward statutory command, there is no reason to resort to legislative history. *Connecticut Nat. Bank v. Germain,* 503 U.S. 249, 254 (1992). Indeed, far from clarifying the statute, the legislative history only muddies the waters. The excerpt from the Senate Report accompanying the 1984 amendment to § 924(c), relied upon by the Court of Appeals, reads:

> [T]he Committee intends that the mandatory sentence under the revised subsection 924(c) be served prior to the start of the sentence for the underlying or any other offense.

S.Rep. at 313-314. This snippet of legislative history injects into § 924(c) an entirely new idea -- that a defendant must serve the five-year-prison term for his firearms conviction before any other sentences. ***This added requirement, however, is "in no way anchored in the text of the statute."*** *Shannon v. United States,* 512 U.S. 573, 583 (1994).

APPENDIX J

United States v. Alvarez-Sanchez, 511 U.S. 350, 357 (1994) [Excerpt]

LEXSEE 511 U.S. 350,AT 357

UNITED STATES, PETITIONER v. PEDRO ALVAREZ-SANCHEZ

No. 92-1812

SUPREME COURT OF THE UNITED STATES

511 U.S. 350; 114 S. Ct. 1599; 128 L. Ed. 2d 319; 1994 U.S. LEXIS 3300; 62 U.S.L.W. 4289; 94 Cal. Daily Op. Service 3059; 94 Daily Journal DAR 5866; 8 Fla. L. Weekly Fed. S 83

March 1, 1994, Argued

May 2, 1994, Decided

...

"Respondent contends that he was under "arrest or other detention" for purposes of § 3501(c) during the interview at the Sheriff's Department, and that his statement to the Secret Service agents constituted a confession governed by this subsection. ***In respondent's view, it is irrelevant that he was in the custody of the local authorities, rather than that of the federal agents, when he made the statement. Because the statute applies to persons in the custody of "any" law enforcement officer or law enforcement agency, respondent suggests that the § 3501(c) 6-hour time period begins to run whenever a person is arrested by local, state, or federal officers.***

We believe respondent errs in placing dispositive weight on the broad statutory reference to "any" law enforcement officer or agency without considering the rest of the statute."

APPENDIX K

Black's Law Dictionary, 6th Ed., "Expressly"

"In an express manner; in ***direct and unmistakable terms; explicitly; definitely; directly****. St. Louis Union Trust Co. v. Hill, 336 Mo. 17, 76 S.W.2d. 685, 689.* ***The opposite of impliedly****. Bolles v. Toledo Trust Co., 144 Ohio St. 195, 58 N.E.2d. 381, 396." (emphasis added)*

APPENDIX L

Murphy v. IRS

MARRITA MURPHY AND DANIEL J. LEVEILLE, APPELLANTS v. INTERNAL REVENUE SERVICE AND UNITED STATES OF AMERICA, APPELLEES

No. 05-5139

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

2006 U.S. App. LEXIS 21401

February 24, 2006, Argued

August 22, 2006, Decided

...

C. The *Sixteenth Amendment*

The Government of the United States is a government of limited powers: "Every law enacted by Congress must be based on one or more of its powers enumerated in the Constitution." *United States v. Morrison, 529 U.S. 598, 607, 120 S. Ct. 1740, 146 L. Ed. 2d 658 (2000).* The constitutional power of the Congress to tax income is provided in the *Sixteenth Amendment*, ratified in 1913:

> The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

The Supreme Court has held the word "incomes" in the Amendment and the phrase "gross income" in *§ 61(a) of the IRC* are coextensive. *See Helvering v. Clifford, 309 U.S. 331, 334, 60 S. Ct. 554, 84 L. Ed. 788, 1940-1 C.B. 105 (1940)* (*§ 61* represents the "full measure of [the Congress's] taxing power"). When it first construed those terms in *Eisner v. Macomber, 252 U.S. 189, 207, 40 S. Ct. 189, 64 L. Ed. 521, 1920-3 C.B. 25, T.D. 3010 (1920)*, the

Supreme Court held the taxing power extended to any "gain derived from capital, from labor, or from both combined." Later, after explaining that [*15] *Eisner* was not "meant to provide a touchstone to all future gross income questions," the Court added that under the IRC -- and, by implication, under the *Sixteenth Amendment* -- the Congress may "tax all gains" or "accessions to wealth." *Commissioner v. Glenshaw Glass Co., 348 U.S. 426, 430-31, 75 S. Ct. 473, 99 L. Ed. 483, 1955-1 C.B. 207 (1955).*

Murphy argues that, being neither a gain nor an accession to wealth, her award is not income and *§ 104(a)(2)* is therefore unconstitutional insofar as it would make the award taxable as income. Broad though the power granted in the *Sixteenth Amendment* is, the Supreme Court, as Murphy points out, has long recognized "the principle that a restoration of capital [i]s not income; hence it [falls] outside the definition of 'income' upon which the law impose[s] a tax." *O'Gilvie, 519 U.S. at 84; see, e.g., Doyle v. Mitchell Bros. Co., 247 U.S. 179, 187-88, 38 S. Ct. 467, 62 L. Ed. 1054, T.D. 2723 (1918); S. Pac. Co. v. Lowe, 247 U.S. 330, 335, 38 S. Ct. 540, 62 L. Ed. 1142, T.D. 2730 (1918)* (return of capital not income under IRC or *Sixteenth Amendment*). By analogy, Murphy contends a damage award for personal injuries --including nonphysical injuries [*16] --is not income but simply a return of capital -- "human capital," as it were. *See* Gary S. Becker, *Human Capital* (1st ed. 1964); Gary S. Becker, "The Economic Way of Looking at Life," 43-45 (Nobel Lecture, Dec. 9, 1992).

According to Murphy, the Supreme Court read the concept of "human capital" into the IRC in *Glenshaw Glass.* There, in holding that punitive damages for personal injury were "gross income" under the predecessor to *§ 61*, the Court stated:

> The long history of ... holding personal injury recoveries nontaxable on the theory that they roughly correspond to a return of capital cannot

> support exemption of punitive damages following injury to property ... Damages for personal injury are by definition compensatory only. Punitive damages, on the other hand, cannot be considered a restoration of capital for taxation purposes.

348 U.S. at 432 n.8. In Murphy's view, the Court thereby made clear that the recovery of compensatory damages for a "personal injury" --of whatever type --is analogous to a "return of capital" and therefore is not income under the IRC or the *Sixteenth Amendment.*

In support of her reading of the caselaw, Murphy contends [*17] the IRC, as drafted shortly after "passage of the [Sixteenth] Amendment demonstrates that compensatory damages designed to make a person whole are excluded from the definition of 'income.'" She focuses upon the three sources the Supreme Court quoted in *O'Gilvie, 519 U.S. 84-87, 136 L. Ed. 2d 454,* to wit, an Opinion of the Attorney General, a Decision of the Department of the Treasury, and a Report issued by the Ways and Means Committee of the House of Representatives --each of which predates the first version of *§ 104(a)(2),* namely, *§ 213(b)(6)* of the Revenue Act of 1918. *See* 40 Stat. 1057, 1066 (1919).

In an opinion rendered to the Secretary of the Treasury on the question whether proceeds from an accident insurance policy were income under the IRC as it stood prior to the 1918 Act, the Attorney General stated:

> Without affirming that the human body is in a technical sense the "capital" invested in an accident policy, in a broad, natural sense the proceeds of the policy do but substitute, so far as they go, capital which is the source of future periodical income. They merely take the place of capital in human ability which was destroyed by the accident. [*18] They are therefore "capital" as distinguished from "income" receipts.

31 Op. Att'y. Gen. 304, 308 (1918). In a revenue ruling, the Department of the Treasury then reasoned that

> upon similar principles ... an amount received by an individual as the result of a suit or compromise for personal injuries sustained ... through accident is not income[that is] taxable.

T.D. 2747, 20 Treas. Dec. Int. Rev. 457 (1918).

As for the House Report on the bill that became the Revenue Act of 1918, it states:

> Under the present law it is doubtful whether amounts received through accident or health insurance, or under workmen's compensation acts, as compensation for personal injury or sickness, and damages received on account of such injuries or sickness, are required to be included in gross income.

H.R. Rep. No. 65-767, at 9-10 (1918). Thereafter, the Congress passed the Act, *§ 213(b)(6)* of which excluded from gross income "[a]mounts received, through accident or health insurance or under workman's compensation acts, as compensation for personal injuries or sickness, plus the amount of any damages received whether by suit or agreement [*19] on account of such injuries or sickness." 40 Stat. 1057, 1066 (1919).

Because the 1918 Act followed soon after ratification of the *Sixteenth Amendment*, Murphy contends that the statute reflects the meaning of the Amendment as it would have been understood by those who framed, adopted, and ratified it. She observes that in *Dotson v. United States, 87 F.3d 682 (5th Cir. 1996)*, the court concluded upon the basis of the House Report that the "Congress first enacted the personal injury compensation exclusion ... when such payments were considered the return of human capital, and thus not constitutionally taxable 'income' under the *16th amendment*." *Id. at 685.*

The Government attacks Murphy's constitutional argument on all fronts. First, invoking the presumption that the Congress enacts laws within its constitutional limits, *see Rust v. Sullivan, 500 U.S. 173, 191, 111 S. Ct. 1759, 114 L. Ed. 2d 233 (1991)*, the Government asserts at the outset that *§ 104(a)(2)* is constitutional even if, as amended in 1996, it does permit the taxation of compensatory damages. Indeed, the Government goes further, contending the Congress could, consistent with the *Sixteenth* [*20] *Amendment*, repeal *§ 104(a)(2)* altogether and tax compensation even for physical injuries.

Noting that the power of the Congress to tax income "extends broadly to all economic gains," *Comm'r v. Banks, 543 U.S. 426, 433, 125 S. Ct. 826, 160 L. Ed. 2d 859 (2005)*, the Government next maintains that compensatory damages "plainly constitute economic gain, for the taxpayer unquestionably has more money after receiving the damages than she had prior to receipt of the award." On that basis, the Government contends Murphy's reliance upon footnote eight of *Glenshaw Glass* is misplaced; merely because the Congress "has historically excluded personal injury recoveries from gross income, based on the make-whole or restoration-of-human-capital theory, does not mean that such an exclusion is mandated by the *Sixteenth Amendment*." Because the Supreme Court in *Glenshaw Glass* was construing "gross income" with reference only to the IRC, the Government argues footnote eight addresses only a now abandoned congressional policy, not the outer limit of the *Sixteenth Amendment*.

According to the Government, the same is true of the 1918 Act and the interpretive rulings that preceded it. Although the Government [*21] acknowledges that the dictum in *Dotson, 87 F.3d at 685*, accords with Murphy's position, the Government notes the court there relied solely upon the House Report. Because the House Report merely states "it is doubtful whether ... compensation for personal injury or sickness ... [is] required to be included in gross income," H.R. Rep. No. 65-767, at 9-10 (1918), the

Government observes that the "report simply does not establish that Congress believed taxing compensatory personal injury damages would be unconstitutional."

In addition, the Government challenges the coherence of Murphy's analogy between a return of "human capital or well-being" and a return of "financial capital," the latter of which it acknowledges does not constitute income under the *Sixteenth Amendment*. *See Doyle, 247 U.S. at 187*; *S. Pac. Co., 247 U.S. at 335*. The Government first observes that financial capital, like all property, has a "basis," defined by the IRC as "the cost of such property," *26 U.S.C. § 1012*, adjusted "for expenditures, receipts, losses, or other items, properly chargeable to [a] capital account," *id. § 1016(a)(1)*; [*22] thus, when a taxpayer sells property, his income is "the excess of the amount realized therefrom over the adjusted basis." *Id. § 1001(a)*. The Government then observes that "[b]ecause people do not pay cash or its equivalent to acquire their well-being, they have no basis in it for purposes of measuring a gain (or loss) upon the realization of compensatory damages." Nor is there any corresponding theory of "human depreciation," which would permit "an offsetting deduction for the exhaustion of the taxpayer's physical prowess and mental agility." Boris I. Bittker & Lawrence Lokken, *Federal Taxation of Income, Estates, and Gifts* P 5.6 (2003). Finally, the Government points to the Ninth Circuit's dictum in *Roemer v. Commissioner, 716 F.2d 693 (1983)*, suggesting that "[s]ince there is no tax basis in a person's health and other personal interests, money received as compensation for an injury to those interests might be considered a realized accession to wealth." *Id. at 696 n.2*.

At the outset, we reject the Government's breathtakingly expansive claim of congressional power under the *Sixteenth Amendment* --upon which it founds the more far-reaching [*23] arguments it advances here. The *Sixteenth Amendment* simply does not authorize the Congress to tax as "incomes" every sort of revenue a taxpayer may receive. As the Supreme Court noted long ago, the

"Congress cannot make a thing income which is not so in fact." *Burk-Waggoner Oil Ass'n v. Hopkins, 269 U.S. 110, 114, 46 S. Ct. 48, 70 L. Ed. 183, 1926-1 C.B. 147, T.D. 3790 (1925).* Indeed, because the "the power to tax involves the power to destroy," *McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 431, 4 L. Ed. 579 (1819),* it would not be consistent with our constitutional government, and the sanctity of property in our system, merely to rely upon the legislature to decide what constitutes income.

Fortunately, we need not rely solely upon the wisdom and beneficence of the Congress for, when the *Sixteenth Amendment* was drafted, the word "incomes" had well understood limits. To be sure, the Supreme Court has broadly construed the phrase "gross income" in the IRC and, by implication, the word "incomes" in the *Sixteenth Amendment,* but it also has made plain that the power to tax income extends only to "gain[s]" or "accessions to wealth." *Glenshaw Glass, 348 U.S. at 430-31.* That is [*24] why, as noted above, the Supreme Court has held a "return of capital" is not income. *Doyle, 247 U.S. at 187; S. Pac. Co., 247 U.S. at 335.* The question in this case is not, however, about a return of capital -- except insofar as Murphy analogizes human capital to physical or financial capital; the question is whether the compensation she received for her injuries is income. *

* In any event, the Government's quarrel with Murphy's analogy, based upon *Glenshaw Glass,* of "human capital" to financial or physical capital is not persuasive. To be sure, the analogy is incomplete; personal injuries do not entail an adjustment to any basis, nor are human resources, such as reputation, depreciable for tax purposes. But nothing in Murphy's argument implies a need to account for the basis in or to depreciate anything. Her point, rather, is that as with compensation for a harm to one's financial or physical capital, the payment of compensation for the diminution of a personal attribute, such as reputation, is but a restoration of the status quo ante, analogous to a

"restoration of capital," *Glenshaw Glass, 348 U.S. at 432 n.8*; in neither context does the payment result in a "gain" or "accession[] to wealth," *id. at 430-31.*

[*25]

To determine whether Murphy's compensation is income under the *Sixteenth Amendment*, we are instructed by the Supreme Court first to consider whether the taxpayer's award of compensatory damages is "a substitute for [a] normally untaxed personal ... quality, good, or 'asset.'" *O'Gilvie, 519 U.S. at 86.* Accordingly, we join our sister circuits by asking: "In lieu of what were the damages awarded"? *Raytheon Prod. Corp. v. Commissioner, 144 F.2d 110, 113 (1st Cir. 1944); see Francisco v. United States, 267 F.3d 303, 319 (3d Cir. 2001)* (treating *Raytheon's* "in lieu of" test as authoritative); *Tribune Publ'g Co. v. United States, 836 F.2d 1176, 1178 (9th Cir. 1988)* (applying "in lieu of" test to determine whether settlement proceeds were income); *Gilbertz v. United States, 808 F.2d 1374, 1378 (10th Cir. 1987)* (adopting "in lieu of" test to determine whether compensatory damages were income). Here, if the $ 70,000 Murphy received was "in lieu of" something "normally untaxed," *O'Gilvie, 519 U.S. at 86*, then her compensation is not income under the *Sixteenth Amendment*; it is [*26] neither a "gain" nor an "accession[] to wealth." *Glenshaw Glass, 348 U.S. at 430-31.*

As we have seen, it is clear from the record that the damages were awarded to make Murphy emotionally and reputationally "whole" and not to compensate her for lost wages or taxable earnings of any kind. The emotional well-being and good reputation she enjoyed before they were diminished by her former employer were not taxable as income. Under this analysis, therefore, the compensation she received in lieu of what she lost cannot be considered income and, hence, it would appear the *Sixteenth Amendment* does not empower the Congress to tax her award.

Our conclusion at this point is tentative because the Supreme Court has also instructed that, in defining "incomes," we should rely upon "the commonly understood meaning of the term which must have been in the minds of the people when they adopted the *Sixteenth Amendment*." *Merchants' Loan & Trust Co. v. Smietanka, 255 U.S. 509, 519, 41 S. Ct. 386, 65 L. Ed. 751, T.D. 3173 (1921)*. And, to discern the original understanding of a provision of the Constitution, we must examine any contemporaneous implementing legislation. *See Myers v. United States, 272 U.S. 52, 175, 47 S. Ct. 21, 71 L. Ed. 160 (1926)* [*27] ("This court has repeatedly laid down the principle that a contemporaneous legislative exposition of the Constitution ..., acquiesced in for a long term of years, fixes the construction to be given its provisions"); *see Macomber, 252 U.S. at 202* (district judge correctly treated "construction of the [Revenue Act of 1913] as inseparable from the interpretation of the *Sixteenth Amendment*"). Therefore, we must inquire whether "the people when they adopted the *Sixteenth Amendment*," or the Congress when it implemented the Amendment, would have understood compensatory damages for a nonphysical injury to be "income."

In the years immediately following ratification of the *Sixteenth Amendment*, the Congress created and then thrice revised the IRC. *See* Revenue Act of 1913, ch. 16, 38 Stat. 114 (1913); Revenue Act of 1916, ch. 463, 39 Stat. 756 (1916); Revenue Act of 1917, ch. 63, 40 Stat. 300 (1917); Revenue Act of 1918, ch. 18, 40 Stat. 1057 (1919). Of the four enactments, that of 1918 was the first to address the tax treatment of compensatory damages for personal injuries, and it did so without distinguishing between physical and nonphysical injuries. We agree with the [*28] Government that the House Report on the 1918 Act is ambiguous and therefore unhelpful on the question before us. We concur in Murphy's view, however, that the Attorney General's 1918 opinion and the Treasury Department's ruling of the same year strongly suggest that

the term "incomes" as used in the *Sixteenth Amendment* does not extend to monies received solely in compensation for a personal injury and unrelated to lost wages or earnings.

That emotional distress and loss of reputation were both actionable in tort when the *Sixteenth Amendment* was adopted supports the view that compensation for these nonphysical injuries was not regarded differently than was compensation for physical injuries and, therefore, was not considered income by the framers of the Amendment and the state legislatures that ratified it. By 1913, in at least 39 of the then-48 states and in the District of Columbia, the law made compensatory damages for "mental suffering" recoverable in the same matter as compensatory damages for physical harms; indeed, in 34 of those states, there are reported cases involving defamation and * other reputational injuries -- the very sort of injury Murphy suffered --and at least five [*29] more states allowed an action for alienation of affections, also a * nonphysical injury. As a result, we see no meaningful distinction between Murphy's award and the kinds of damages recoverable for personal injury when the *Sixteenth Amendment* was adopted. Because, as we have seen, the term "incomes," as understood in 1913, clearly did not include damages received in compensation for a physical personal injury, we infer that it likewise did not include damages received for a nonphysical injury and unrelated to lost wages or earning capacity.

* *See, e.g., Garrison v. Sun Printing & Publ'g Ass'n, 207 N.Y. 1, 6, 100 N.E. 430, 431, 3 Bradb. 267, 1 N.Y. L. Cas. 131 (1912)* (plaintiffs are "entitled to recover compensatory damages for mental distress resulting from the publication of defamatory words actionable in themselves"); *Guisti v. Galveston Tribune, 105 Tex. 497, 504-05 150 S.W. 874, 877 (1912)* (holding statute afforded "right to maintain an action for a publication not libelous per se [without having] to allege or prove special damages ... for mental anguish"); *Fileds v.*

Bynum, [illegible] *N.C. 413, 72 S.E. 449, 451 (1911)* (general damages in defamation actions "include injury to the feelings, and mental suffering endured in consequence"); *Comer v. Advertiser Co., 172 Ala. 613, 55 So. 195, 198 (1911)* (in libel actions "damages for mental pain and suffering ... must in all cases be fixed by the jury, in view of all the facts and circumstances surrounding any particular case"); *Miller v. Dorsey, 149 Mo. App. 24, 129 S.W. 66, 69 (1910)* (upholding jury award of damages in action for slander "to compensate [plaintiff] for the mortification and shame he might have suffered, and the disgrace and dishonor attempted to be cast upon him, and all damages done to his reputation"); *Jozsa v. Moroney, 125 La. 813, 821, 51 So. 908, 911 (1910)* (in libel action "damages for mental suffering alone can be recovered, although the party may have suffered no other loss"); *Moore v. Maxey, 152 Ill. App. 647, 1910 WL 1686, at *2 (1910)* ("Where words spoken are actionable *per se* ... there need be no direct evidence of mental suffering to enable the jury to consider it in their estimate of damages"); *Davis v. Mohn, 145 Iowa 417, 124 N.W. 206, 207 (1910)* (holding mental "pain and suffering may be considered by the jury in determining the amount of damages in cases where the words spoken are actionable [as slander] per se"); *Henry v. Cherry & Webb, 30 R.I. 13, 73 A. 97, 102 (1909)* (noting that "mental suffering alone [will] sustain a right of action" if "the words spoken or pictures published are of such a nature that the court can conclude, as a matter of law, that they will tend to degrade the person, or hold him up to public hatred, contempt, or ridicule, or cause him to be shunned and avoided"); *Neafie v. Hoboken Printing & Publ'g Co., 75 N.J.L. 564, 566, 68 A. 146, 147 (1907)* (rejecting view that "mental anguish cannot be considered in estimating compensatory damages in an action of libel"); *McArthur v. Sault News Printing Co., 148 Mich. 556, 558, 112 N.W. 126, 127 (1907)* ("A woman might have a bad reputation and a bad character, neither of which

would be changed by such a [libelous] publication, and yet be entitled to substantial damages for injuries to her feelings resulting from the publication"); *Todd v. Every Evening Printing Co., 22 Del. 233, 6 Penne. 233, 66 A. 97, 99 (1907)* ("amount to be awarded to the plaintiff should be such as would reasonably compensate him for any wrong done to his reputation, good name, or fame, and for any mental suffering caused thereby as shown by the evidence"); *Gendron v. St. Pierre, 73 N.H. 419, 62 A. 966, 969 (1905)* ("amount of the damages" in slander action "depends in part upon the effect of the malice upon the plaintiff's mind"); *Ott v. Press Pub. Co., 40 Wash. 308, 310, 82 P. 403, 404 (1905)* ("upon a proper showing damages for mental pain and suffering may be recovered" in libel action); *Wash. Times Co. v. Downey, 26 App. D.C. 258, 1905 WL 17653, at *4 (1905)* (holding "plaintiff is ... entitled to recover as general damages for injury to her feelings and the mental suffering which she endured as a natural result of the [libelous] publication"); *Hanson v. Krehbiel, 68 Kan. 670, 75 P. 1041, 1042 (1904)* (noting that general damages for libel and slander actions are "designed to compensate for that large and substantial class of injuries arising from injured feelings, mental suffering and anguish, and personal and public humiliation"); *Finger v. Pollack, 188 Mass. 208, 209, 74 N.E. 317, 318 (1905)* ("In an action for slander one of the elements of damage is mental suffering"); *Davis v. Starrett, 97 Me. 568, 55 A. 516, 519 (1903)* ("plaintiff is entitled to recover compensation [for] slander, such as injury to the feelings and injury to the reputation"); *Bedtkey v. Bedtkey, 15 S.D. 310, 89 N.W. 479, 480 (1902)* (holding "evidence of injury to feelings having been admitted without objection, damages therefore are recoverable"); *Kidder v. Bacon, 74 Vt. 263, 52 A. 322, 324 (1902)* ("It is well settled that when the words spoken are actionable the jury have a right to consider the mental suffering which may have been occasioned to a party by the publication of the slanderous words,

and to allow damages therefor"); *Hacker v. Heiney, 111 Wis. 313, 87 N.W. 249, 251 (1901)* (rejecting contention that "no recovery can be had for injury to feelings" in action for slander); *McCarty v. Kinsey, 154 Ind. 447, 57 N.E. 108, 108 (1900)* (holding it was "proper for the jury to consider" slanderous words used in course of an assault and battery "with all the circumstances in evidence, and the humiliation, degradation, shame, and loss of honor, and mental anguish, if any, caused thereby, in determining the amount of damages"); *Gray v. Times Newspaper Co., 78 Minn. 323, 324, 81 N.W. 7, 7 (1899)* (plaintiff "was entitled to some damages for injury to his feelings, shame, and loss of the good opinion of his fellows, and injury to his standing in the community"); *Louisville Press Co. v. Tennelly, 105 Ky. 365, 49 S.W. 15, 17, 20 Ky. L. Rptr. 1231 (1899)* ("the rule is well settled that the publication of a libel exposes the publisher, not only to compensatory damages for the loss of business, but also to a judgment for the mental suffering that the libel or slander inflicts upon the plaintiff"); *Cole v. Atlanta & W.P.R. Co., 102 Ga. 474, 31 S.E. 107, 108 (1897)* (permitting action by plaintiff passenger against railroad for its employee's slander, which caused plaintiff "to undergo the pain and mortification of being publicly denounced"); *Fry v. McCord, 95 Tenn. 678, 33 S.W. 568, 571 (1895)* (damages for slander per se may include "pain, mental anxiety, or general loss of reputation"); *Taylor v. Hearst, 170 Cal. 262, 270, 40 P. 392, 393-94 (1895)* ("actual damages embraces recovery for loss of reputation, shame, mortification, injury to feelings, etc.; and while special damages must be alleged and proven, general damages for outrage to feelings and loss of reputation need not be alleged in detail"); *Taylor v. Dominick, 36 S.C. 368, 15 S.E. 591, 593-94 (1892)* ("the elements of damages in the action for malicious prosecution are the injury to the reputation or character, feelings, health, mind, and person, as well as expenses incurred in defending the prosecution"); *Stallings v. Whittaker, 55 Ark. 494, 18*

S.W. 829, 831 (1892) (damages in slander action may compensate for "mental suffering and mortification"); *Republican Pub. Co. v. Mosman, 15 Colo. 399, 410, 24 P. 1051, 1055 (1890)* ("in cases of written slander where the defamatory matter is libelous *per se*, the mental suffering of the plaintiff, occasioned by the false publication, may be taken into consideration, in awarding general compensatory damages"); *Commercial Gazette Co. v. Grooms, 10 Ohio Dec. Reprint 489, 1889 WL 346, at *4 (1889)* ("The most natural result from an injury to reputation is mental suffering and it is a proper element to be considered in estimating damages in a libel suit"); *Boldt v. Budwig, 19 Neb. 739, 28 N.W. 280, 283 (1886)* ("jury should consider the damage to her character, as well as her mental suffering caused [by the slander]"); *Riddle v. McGinnis, 22 W.Va. 253, 1883 WL 3242, at *15 (1883)* ("in ... actions for wilful and wanton injuries done to the person and reputation ... the plaintiff is entitled to recover damages ... for his mental anguish"); *Swift v. Dickerman, 31 Conn. 285, 1863 WL 763, at *7 (1863)* (holding "anxiety and suffering [due to slander] were proper subjects for compensation to the plaintiff, and ought to be atoned for by the defendant"); *Beehler v. Steever*, 1 Miles 146, 1837 WL 3209, at *6 (1837) (noting in syllabus that "[o]utrage to the plaintiff's feelings and peace of mind may be considered" by the jury in awarding damages for slander).

[*30]

* *See, e.g., Greuneich v. Greuneich, 23 N.D. 368, 137 N.W. 415 (N.D. 1912); Hillers v. Taylor, 116 Md. 165, 81 A. 286 (Md. 1911); Seed v. Jennings, 47 Or. 464, 83 P. 872 (Or. 1905); Tucker v. Tucker, 74 Miss. 93, 19 So. 955 (Miss. 1896); Samuel v. Marshall, 30 Va. 567, 1832 WL 1822 (Va. 1832).* An action for "alienation of affection" enabled the plaintiff to recover damages for mental suffering and reputational damage arising from the defendant's interference in the relationship between the plaintiff and his or her spouse. *See gener-*

ally RESTATEMENT (SECOND) OF TORTS § 683 cmt. f (1977) ("It is unnecessary for recovery that the acts of the defendant cause any financial loss to the injured spouse").

The IRS itself reached the same conclusion when it first addressed the question, expressly affirming that personal injuries included nonphysical personal injuries:

> [T]here is no gain, and therefore no income, derived from the receipt of damages for alienation of [*31] affections or defamation of personal character ... If an individual is possessed of a personal right that is not assignable and not susceptible of any appraisal in relation to market values, and thereafter receives either damages or payment in compromise for an invasion of that right, it can not be held that he thereby derives any gain or profit.

Sol. Op. 132, I-1 C.B. 82, 93 (1922); *see also Hawkins v. Commissioner, 6 B.T.A. 1023, 1024-25* (U.S. Bd. of Tax App. 1927) (holding "compensation for injury to [plaintiff's] personal reputation for integrity and fair dealing" was not income because it was "an attempt to make the plaintiff whole as before the injury"). Note that the Service regarded such compensation not merely as excludable under the IRC, but more fundamentally as not being income at all.

In sum, every indication is that damages received solely in compensation for a personal injury are not income within the meaning of that term in the *Sixteenth Amendment*. First, as compensation for the loss of a personal attribute, such as well-being or a good reputation, the damages are not received in lieu of income. Second, the framers of the *Sixteenth Amendment* [*32] would not have understood compensation for a personal injury -- including a nonphysical injury -- to be income. Therefore, we hold *§ 104(a)(2)* unconstitutional insofar as it permits

the taxation of an award of damages for mental distress and loss of reputation.

III. Conclusion

Albert Einstein may have been correct that "[t]he hardest thing in the world to understand is the income tax," *The Macmillan Book of Business and Economic Quotations* 195 (Michael Jackman ed., 1984), but it is not hard to understand that not all receipts of money are income. Murphy's compensatory award in particular was not received "in lieu of" something normally taxed as income; nor is it within the meaning of the term "incomes" as used in the *Sixteenth Amendment*. Therefore, insofar as *§ 104(a)(2)* permits the taxation of compensation for a personal injury, which compensation is unrelated to lost wages or earnings, that provision is unconstitutional. Accordingly, we remand this case to the district court to enter an order and judgment instructing the Government to refund the taxes Murphy paid on her award plus applicable [*33] interest.

APPENDIX M

16th Amendment to the Constitution

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

(3)
Supreme Court, U.S.
FILED
06-461 AUG 29 2006
No: OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

UNITED STATE OF AMERICA,

Respondent,

vs.

JOSEPH O. SALADINO,

Petitioner,

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

SUPPLEMENTAL APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

JOSEPH O. SALADINO
Pro se Litigant
9637 W. LITTLEWOOD DR.
BOISE, IDAHO 83709
208-562-1089

September 12, 2006

TABLE OF CONTENTS

APPENDIX N **1**

ORDERS FROM THE USDC FOR THE CENTRAL DISTRICT OF CALIFORNIA 1

1. *Order No. 1 of January 20, 2005* *1*
2. *Order No. 2 of January 20, 2005* *7*
3. *Order of January 25, 2005* *16*

APPENDIX N

Orders from the USDC for the Central District of California

1. **Order No. 1 of January 20, 2005**

ENTERED	FILED
JAN 20, 2005 CENTRAL DISTRICT COURT OF CALIFORNIA	JAN 20, 2005 CENTRAL DISTRICT COURT OF CALIFORNIA

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

	)	CV 04-02100 FMC
UNITED STATES OF AMERICA,	)	(JWJx)
	)	
Plaintiff	)	ORDER GRANTING
vs.	)	PLAINTIFF'S MOTION
	)	FOR SUMMARY
JOSEPH O. SALADINO,	)	JUDGMENT
individually doing business as Freedom and	)	
	)	ORDER DENYING DE-
Privacy Committee,	)	FENDANT'S MOTION
Defendant	)	FOR SUMMARY
	)	JUDGMENT

This matter is before the Court on Plaintiff's Motion for Summary Judgment (docket #49). This matter is also before the Court on Defendant's cross-Motion for Summary Judgment (docket #54). The Court has reviewed the moving and opposition papers. The Court deems this matter appropriate for decision without oral argument. See Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set for January 24, 2005, is removed from the Court's calendar.

As explained below, the Court grants the Government's Motion for Summary Judgment, and denies Defendant's Motion for Summary Judgment.

I. Introduction

On October 18, 2004, the Court found that Defendant's actions in promoting his tax programs violated 26 U.S.C. § 6700 and § 6701. Accordingly, pursuant to the Government's Motion, the Court entered a Preliminary Injunction, prohibiting Defendants from continuing to engage in the marketing of his tax programs.

The evidence submitted in connection with the preliminary injunction remains undisputed, and the Government moves for summary judgment. Specifically, the Government seeks the imposition of a permanent injunction on essentially the same terms as the preliminary injunction. The Government also requests the Court retain jurisdiction over this matter to ensure Defendant's compliance with its Orders. The Government asks that the Court order the Defendant to produce his customer list to the United States.[1] Finally, the Government requests post-judgment discovery, to monitor compliance with the Court's Orders.

Upon review of all the evidence submitted by the parties, including the evidence submitted in connection with the preliminary injunction, the Court finds no triable issue of fact as to the Government's claims. Accordingly, the Government is entitled to summary judgment. The Court has filed concurrently with this Order a permanent injunction.

II. Defendant's Arguments

Defendant raises a number of arguments in opposition to the Motion for Summary Judgment.

A. Jurisdiction

Defendant argues the Court lacks subject-matter jurisdiction. Jurisdiction over the present action, as noted by the Government in the Complaint, is conferred upon the Court by several statutes. See 28 U.S.C. § 1340 (confer-

---

[1] The Government candidly acknowledges that it may already possess this information by virtue of a search warrant executed by the IRS in March 2004. Nevertheless, the Government notes that the files seized by agents executing the search warrant "are currently unavailable to IRS civil audit personnel." Motion at 7 n.18.

ring jurisdiction upon the district courts for actions involving Acts of Congress relating to internal revenue); 28 U.S.C. § 1345 (conferring jurisdiction on the district courts for actions brought by the United States); 26 U.S.C. § 7402 (conferring jurisdiction on the district courts to issue injunctions "as may be necessary or appropriate for the enforcement of the internal revenue laws"); 26 U.S.C. § 7408 (actions to enjoin promoters of abusive tax shelters "shall be brought" in the district court for the district in which the promoter resides).

Defendant also argues that the "Court has no...jurisdiction...to make any determination regarding the validity of the claim of right issues Defendant has before the IRS Appeals Office during the pendency of said appeal." Opposition at 12, citing 26 C.F.R. §§ 601.103, 601.106. By Defendant's reasoning, because he is involved in cases before the IRS Appeals Office that implicate this very issue, the Court is without jurisdiction to decide the issue. The Court rejects this argument. By virtue of the jurisdiction statutes cited above, this Court has jurisdiction over the issue of the validity of Defendant's "claim of right" tax program to the extent that it is necessary to adjudicate the Government's claim against him. Such adjudication will not result in the determination of the amount of taxes owed by any taxpayer, which is the issue pending before the IRS Appeals Office.

While these separate cases may implicate the same legal question, they do not involve the same issue such that jurisdiction in one forum precludes jurisdiction in another.

Defendant's jurisdictional challenges are without merit.

B. Contents of Website

Defendant suggests that he should not be held responsible for the contents of the website, <www.freedomcommittee.com>. Defendant states in his opposition:

> While Defendant, as a programmer, did create the majority of the FPC website, there is no evidence in the

> record confirming that Defendant was solely responsible for the content of said web pages, that he was cognizant of all the contents of the website[,] or that he had sole control of said web pages.... Defendant is a professional web designer/programmer. Programmers routinely create significant websites without contributing at all to the content of said developed/created websites. Plaintiff has no idea how FPC is organized and who is responsible for what activities in the date to day operation of the organization and cannot certify from firsthand knowledge which pages were allegedly created by Defendant and which were created by others in the FPC Organization.

Opposition at 13 and n.18. Defendant's representations are unconvincing in light of his earlier sworn affidavit, in which he claimed to be the "sole overseer" of the entity that maintains the website and in which he acknowledges that he uploaded the entire contents of the website:

> 2. Affiant can speak authoritatively for Freedom & Privacy Committee (FPC) since Affiant is the sole overseer of Freedom and Privacy Committee, a corporation sole.
>
> ....
>
> 4. Affiant is the webmaster and creater of the FPC Website located at http://www.freedomcommittee.com.
>
> 5. The content of the FPC Website was written by members in the FPC organization and Affiant jointly.
>
> 6. Although Affiant may not have written all the content, Affiant is responsible for having uploaded the content to the FPC Website.

Saladino Affidavit, October 8, 2004 (docket #32).

A party may not contradict earlier testimony in order to create a triable issue of fact. In his October 2004 affidavit, Defendant acknowledged his responsibility for the website in question. He described himself as the "sole overseer" of the entity that maintains the website. He acknowledged he uploaded the entire contents of the website. He may not now disclaim that responsibility.

C. First Amendment Rights

Defendant argues that requiring a church to meet the requirements set forth in 26 U.S.C. § 501(c)(3)[2] violates the Free Exercise Clause of the First Amendment. Defendant appears to be arguing that by denying tax-exempt status to the "churches" advocated by his "corporation sole" tax program, the Government is impinging on the right of the taxpayer claiming corporation sole status to freely exercise his or her religion. Defendant has cited no authority to support this proposition, and the Court, in its own research, has found none. To the contrary, courts have upheld Free Exercise Clause challenges to provisions of § 501(c)(3). See, e.g., *Bob Jones University v. United States*, 461 U.S. 574,103 S. Ct. 2017 (1983) (upholding against Free Exercise Clause challenge the revocation of tax-exempt status justified on public policy grounds where religious university prohibited inter-racial dating); *Branch Ministries v. Rossotti*, 211 F.3d 137 (D.C. Cir. 2000) (holding that it is permissible to condition tax-exempt status on church's agreement to limit its political activity).

Defendant's free exercise challenge is therefore without merit.

III. The Government's Requests for Relief

---

[2] Section 501(c)(3) exempts from taxation charitable and religious entities, so long as certain conditions are met. That section provides that the following entities shall be exempt from taxation:

> (3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

26 U.S.C. § 501(c)(3)

The Court is concurrently filing a permanent injunction.

The Court will retain jurisdiction to ensure compliance with the Court's Order. This is particularly appropriate in light of Defendant's apparent failure to comply with the Court's Order requiring him to post a copy of the Preliminary Injunction on his website.

The Court grants the Government's request that it be permitted to engage in post-judgment discovery to ensure compliance with the Court's order.

The Government requests that the Court order Defendant to provide copies of its customer list. Although the Court denies this request, the Court notes that Defendant's customer list is an appropriate subject for post-judgment discovery.

IV. Conclusion

The Court grants Plaintiffs Motion for Summary Judgment (docket #49) and denies Defendant's cross-Motion for Summary Judgment (docket #54).

The clerk shall file the previously lodged proposed Permanent Injunction Order.

The Court retains jurisdiction of this action for the purpose of implementing and enforcing the judgment. The Government may engage in post-judgment discovery as necessary to ensure Defendant's compliance with the Permanent Injunction.

Defendant is cautioned that failure to comply with the Court's Permanent Injunction may result in the imposition of civil contempt penalties sufficient to coerce his compliance.

The Government shall lodge a proposed judgment within ten days of the entry of this Order.

Dated: January 20, 2005

s/_____
FLORENCE-MARIE COOPER, JUDGE
UNITED STATES DISTRICT COURT

2. **Order No. 2 of January 20, 2005**

FILED
JAN 20, 2005
CENTRAL DISTRICT
COURT OF CALIFORNIA

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	CV 04-02100 FMC (JWJx)
Plaintiff	)	PERMANENT IN-
vs.	)	JUNCTION ORDER
JOSEPH O. SALADINO, individually doing business as Freedom and Privacy Committee,	)	
Defendant	)	

Upon motion by-the Plaintiff United States of America, and based on the record in this case, including evidence presented in the motion for preliminary injunction, and at the hearings held in this case, a permanent injunction is hereby entered against defendant Joseph 0. Saladino. The Court finds and orders as follows:

Standards for Permanent Injunction

In order to obtain a permanent injunction pursuant to 26 U.S.C. § (Internal Revenue Code, "IRC") § 7408, the United States must show that (1) defendant either engaged in conduct subject to penalty under IRC §§ 6700 or 6701; and (2) injunctive relief is appropriate to prevent the recurrence of such conduct. The Court may issue an injunction under IRC § 7402 "as may be necessary or appropriate for the enforcement of the internal revenue laws." IRC § 7402(a).

Findings of Fact

1. This Court has jurisdiction over the parties and subject matter of this case.

2. Joseph 0. Saladino, a self-professed tax expert, promotes abusive tax shelters, referred to herein as the "corporation sole" program and the "claim of right" program. He conducts his business through Freedom & Privacy Committee ("FPC").

3. According to its promotional material, FPC "is an educational organization dedicated to helping you reclaim 100% of your FREEDOM and PRIVACY. You may think you are free, but anyone who has been hoodwinked by the legal system (i.e., traffic tickets, IRS confiscations, etc.) knows in their heart that something is seriously wrong with the system and the government." Further, FPC markets its products to those persons "convinced that you are NOT required to pay Federal Income Tax and [ ] need help getting free from the IRS. We fully support legal taxes but not direct taxes which are prohibited by the Constitution of the United States."I

4. Saladino's tax promotion involves a multi-level marketing organization that relies on management and subpromoters. Wholesale packages of the tax programs are purchased by subpromoters directly through Saladino and FPC. The subpromoters (or salesmen) then sell the packages to the participants. Saladino and FPC are involved in each transaction and have complete participant information, although the actual sale transactions may occur between the participant and the FPC subpromoter. Participants or purchasers are encouraged to become FPC subpromoters and further market the scheme.

5. Saladino markets the abusive FPC tax program nationwide through internet websites, including the FPC website www.freedomcommittee.com, conference calls, and seminars. Subpromoters receive their own internet web page, which is linked directly to the FPC main website. Membership in the FPC organization costs $200, with a $100 annual renewal fee. FPC advertises that membership "can eliminate your personal income taxes"

and permits participants to "operate a business tax free and still enjoy limited liabilities."

6. There are hundreds of participants located nationwide in Saladino's promotion.

The Corporation Sole Package

7. Saladino markets the FPC "corporation sole" arrangement as a means to evade the reporting and payment of federal income taxes, as well as a means to conceal assets and thereby evade estate and inheritance taxes and IRS collection efforts. Saladino markets the corporation sole package for $2,295. After receiving a customer's application and payment, Saladino instructs participants how to form a corporation sole, including how to conceal assets and taxable income by transferring assets and income to their corporations sole.

8. Saladino falsely or fraudulently advises participants that they: can treat their corporations sole as a "church" with no tax return filing requirement, and yet can control and use the assets and income of the corporation sole for their own personal benefit. FPC promotional material states that "this product will position you to have full-time ministry which is tax free." Saladino advises participants that corporations sole that are used for the participants' personal benefit are tax exempt, do not need to file tax returns of any kind, and do not need to keep records. Saladino also falsely states that a corporation sole's church status cannot be challenged by the Government.

9. Saladino further falsely states that participants can make donations to their corporations sole and then deduct the donations on the participants' federal income tax returns (in the event returns are filed), even though the entities are owned and controlled by the participants.

10. Saladino falsely or fraudulently advises that a participant who becomes the "minister" or "overseer" of the corporation sole and takes a vow of poverty, can assign his income to the corporation sole and thereby transform taxable individual income into nontaxable income of the corporation sole. According to Saladino, "Once you declare

your pauper status, your income is tax-free to you and "your assets cannot be encumbered with a property tax."

11. Saladino falsely or fraudulently states that a corporation sole can be engaged in any occupation, business or profession, and that all earnings therefrom are tax exempt, and that no tax return need be filed. Saladino also advises that if the participant's residence or real estate is titled in the name of the corporation sole, then the individual can use and maintain it as a tax-exempt parsonage, and that the corporation sole can provide the participant housing or a housing allowance that is tax exempt.

12. Saladino falsely or fraudulently touts participating in the corporation sole program as a mechanism that enables participants to drop out of the federal tax system entirely. The effect of Saladino's scheme is that the participant lives in the same residence and operates the same business activity as he did prior to joining the program. All living expenses of the participant and his family are paid from compensation earned from the business activity, just as before the creation of the corporation sole. The participant receives the full benefit of, and has full control over, all corporation sole funds. The only substantive change in the participants' regular business and lifestyle activities is the alleged benefit of no taxation.

The Claim of Right Package

13. The claim of right promotion involves filing erroneous income tax returns or claims for refund. The cost of the claim of right package to participants is $1,095 for the, first year and $250 for additional years, plus 25% of each refund above the first $1,000 received.

14. Saladino asserts that taxpayers have an alleged common-law and constitutional right to exclude from taxation all compensation for personal services or labor rendered. According to Saladino, the claim of right package "is used to claim that `compensation for personal labor' may be excluded from taxation." Saladino falsely states that the program "allows most people who work for wages and do not have profits from sources that are not directly attributable to their labor to reduce their taxable

income to zero, which results in no taxes due in most cases." He falsely asserts that either IRC § 183, 212 or 1341 or codifies this so-called common-law or constitutional right and entitles participants to take a deduction in the amount of compensation earned, which in most cases eliminates a participant's tax liability. According to Saladino, this can be done by claiming an itemized deduction to offset wages reported on W-2 forms, or by taking a Schedule C deduction to offset any net income from self-employment.

15. Saladino falsely states that participants in the FPC claim of right scheme are able to recover all of their withheld income and social security taxes, and also to eliminate any self-employment tax. Also, "[t]his program allows one to get a refund of all taxes (including Social Security, Medicare, etc.) withheld from paychecks. This is the only lawful approach to eliminating the IRS from your life." According to promotional materials, FPC "will assist clients correct their 1040 (1040X) returns for new and existing members in such a way that they may receive back all federal withholding taxes and social security/medicare overpayments." Saladino has signed numerous federal income tax returns as a return preparer for persons taking fraudulent claim of right deductions.

16. FPC promotional material further falsely asserts that "[this program is in strict adherence to IRC Code," and "this program is in compliance with IRC rules and regulations." Saladino makes these claims even though the IRS has disallowed the claim of right deductions on his own income tax returns for the years 1998 through 2001. The IRS has assessed frivolous return penalties against Saladino for each of those returns. In addition, as Saladino is aware, the Government is vigorously opposing his customers' claim of right deductions in Court of Federal Claims litigation.

17. Saladino requests that participants in the claim of right program furnish him with their personal tax information, including tax returns, so that he can modify the returns to conform to his tax program. In order to join the

claim of right program, participants are required to give Saladino power of attorney to represent them before the Internal Revenue Service for the tax years in which they ii take part in the program. Saladino is supporting his claim of right program in litigation in the United States Court of Federal Claims, either by supervising his customers' cases or by having the customers assign their alleged refund rights to him. Saladino has not been successful in that forum.

18. Both the corporation sole and the claim of right programs are identified in the IRS's annual consumer alert of tax scams.

19. Saladino has substantially interfered with the administration and enforcement of the nation's tax laws. Participation in Saladino's abusive program results in customers failing to file federal income tax returns, failing to file proper and accurate returns, and/or failing to pay their federal tax liabilities. This results in irreparable harm to the United States.

20. Saladino's corporation sole and claim of right programs are frivolous and without merit. Saladino knew or should have known that his representations regarding the tax benefits of the programs are false or fraudulent. Furthermore, Saladino aids in or assists in the preparation of federal tax returns or claims for refund that he knows, if used, would result in an understatement of tax liability.

Conclusions of Law

1. Based upon the factual findings and evidence presented by the parties, the Court finds that Saladino is engaging in conduct in violation of IRC §§ 6700 and 6701, and that injunctive relief is appropriate to prevent the recurrence of that conduct.

2. The Court also finds that Saladino is engaging in conduct that interferes with the enforcement of the internal revenue laws, and that the United States and the public will suffer irreparable harm in the absence of a permanent injunction.

3. Based on the evidence and argument presented, Saladino's position is frivolous and the United States has

prevailed on the merits. The public interest will be served by granting a permanent injunction.

4. Also, it is evident that Saladino will continue to violate the Internal Revenue Code absent an injunction, and, that the United States has no adequate remedy at law to stop Saladino's abusive tax schemes.

5. Accordingly, the Court finds that Saladino, and any business or entity through which he operates, and anyone acting in concert with him, should be permanently enjoined under IRC §§ 7408 and 7402(a).

Order

Based on the foregoing factual findings and for good cause shown, entry of a permanent injunction is appropriate. Therefore, it is hereby

ORDERED that Defendant Joseph 0. Saladino, individually and doing business as Freedom & Privacy Committee, or as any other entity, and his representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with him, including his distributors, is permanently enjoined from directly or indirectly:

(1) Organizing, promoting, marketing, or selling any abusive tax shelter, plan or arrangement that advises or encourages taxpayers to attempt to violate the internal revenue laws or unlawfully evade the assessment or collection of their federal tax liabilities, including the corporation sole and claim of right programs;

(2) Making false statements about the allowability of any deduction or credit, the excludability of any income, or the securing of any tax benefit by participating in such tax shelters, plans or arrangements;

(3) Encouraging, instructing, advising or assisting others to violate the tax laws, including to evade the payment of taxes;

(4) Engaging in conduct subject to penalty under IRC § 6700, i.e., by making or furnishing, in connection with the organization or sale of an

abusive shelter, plan, or arrangement, a statement the defendant knows or has reason to know to be false or fraudulent as to any material matter;

(5) Engaging in conduct subject to penalty under IRC § 6701, i.e., preparing or assisting others in the preparation of any tax forms or other documents to be used in connection with any material matter arising under the internal revenue laws and which the defendant knows will (if so used) result in the understatement of tax liability;

(6) Engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws by the Internal Revenue Service; and

(7) Representing any persons or entities before the Internal Revenue Service in any manner, directly or indirectly.

Further, IT IS HEREBY ORDERED that Saladino, at his own expense, contact by mail (or by e-mail, if an address is unknown) all individuals who have previously purchased his abusive tax shelters, plans, arrangements or programs, including the corporation sole program and the claim of right program, and inform those individuals of the Court's findings concerning the falsity of the defendant's prior representations and provide a copy of this Permanent Injunction Order to those persons, and to file with the Court, within 15 days of the date of this Order, a certification that he has done so;

Further, IT IS HEREBY ORDERED that Saladino and his representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with him, including his distributors, remove from their websites, including www.freedomcornmittee.com, all abusive tax scheme promotional materials, false commercial speech, and materials designed to incite others imminently to violate the law (including the tax laws), to display prominently on the first page of those websites a

complete copy of this Order, and to maintain the websites, at their own expense, for one year with a complete copy of the Court's permanent injunction so displayed throughout that time; and to file with the Court, within 15 days of the date of this Order, a certification that he has done so;

Further, IT IS HEREBY ORDERED that the United States is permitted to engage in post judgment discovery to ensure compliance with the permanent injunction; and

Further, IT IS HEREBY ORDERED that this Court shall retain jurisdiction of this action for the purpose of implementing and enforcing this Final Judgment.

There being no just reason for delay, the Clerk is directed to enter this Final Judgment forthwith.

Dated: Jan. 20, 2005

s/_____
FLORENCE-MARIE COOPER, JUDGE
UNITED STATES DISTRICT COURT

3. **Order of January 25, 2005**

ENTERED	FILED
JAN 26, 2005 CENTRAL DISTRICT COURT OF CALIFORNIA	JAN 25, 2005 CENTRAL DISTRICT COURT OF CALIFORNIA

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff vs. JOSEPH O. SALADINO, individually doing business as Freedom and Privacy Committee, Defendant	)	CV 04-02100 FMC (JWJx) JUDGMENT

Upon motion for summary judgment by the plaintiff, United States of America, judgment is hereby entered in favor of the plaintiff and against the defendant, Joseph 0. Saladino, individually and d/b/a Freedom & Privacy Committee. It is hereby

ORDERED that defendant Joseph 0. Saladino, individually and doing business as Freedom & Privacy Committee, or as any other entity, and his representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with him, including his distributors, is permanently enjoined from directly or indirectly:

(1) Organizing, promoting, marketing, or selling any abusive tax shelter, plan or arrangement that advises or encourages taxpayers to attempt to violate the internal revenue laws or unlawfully evade the assessment or collection of their federal tax li-

abilities, including the corporation sole and claim of right programs;

(2) Making false statements about the allowability of any deduction or credit, the excludability of any income, or the securing of any tax benefit by participating in such tax shelters, plans or arrangements;

(3) Encouraging, instructing, advising or assisting others to violate the tax laws, including to evade the payment of taxes;

(4) Engaging in conduct subject to penalty under IRC § 6700, i.e., by making or furnishing, in connection with the organization or sale of an abusive shelter, plan, or arrangement, a statement the defendant knows or has reason to know to be false or fraudulent as to any material matter;

(5) Engaging in conduct subject to penalty under IRC § 6701, i.e., preparing or assisting others in the preparation of any tax forms or other documents to be used in connection with any material matter Arising under the internal revenue laws and which the defendant knows will (if so used) result in the understatement of tax liability;

(6) Engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws by the internal revenue service; and

(7) Representing any persons or entities before the internal revenue service in any manner, directly or indirectly.

Further, IT IS HEREBY ORDERED that Saladino, at his own expense, contact by mail (or by e-mail, if an address is unknown) all individuals who have previously purchased his abusive tax shelters, plans, arrangements or programs, including the corporation sole program and the claim of right program, and inform those individuals of the court's findings concerning the falsity of the defendant's prior representations and provide a copy of the permanent injunction order entered January 20, 2005, to

those persons, and to file with the court, by February 4, 2005, a certification that he has done so;

Further, it is hereby ordered that Saladino and his representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with him, including his distributors, remove from their websites, including www.freedomcomrnittee.com all abusive tax scheme promotional materials, false commercial speech, and materials designed to incite others imminently to violate the law (including the tax laws), to display prominently on the first page of those websites a complete copy of the permanent injunction order, and to maintain the websites, at their own expense, for one year with a complete copy of the court's permanent injunction so displayed throughout that time; and to file with the court, by February 4, 2005, a certification that he has done so;

Further, it is hereby ordered that the United States is permitted to engage in post judgment discovery to ensure compliance with the permanent injunction; and

Further, it is hereby ordered that this court shall retain jurisdiction of this action for the purpose of implementing and enforcing this final judgment.

Dated: 1/25/05

s/_____
FLORENCE-MARIE COOPER, JUDGE
UNITED STATES DISTRICT COURT

Supreme Court, U.S.
FILED
NOV 2 4 2006
OFFICE OF THE CLERK

(4)

No: 06-461

IN THE

Supreme Court of the United States

UNITED STATES OF AMERICA,

Respondent,

vs.

JOSEPH O. SALADINO,

Petitioner,

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR REHEARING

JOSEPH O. SALADINO
Pro se Litigant
9637 W. LITTLEWOOD DR.
BOISE, IDAHO 83709
208-562-1089

November 24, 2006

TABLE OF CONTENTS

TABLES OF AUTHORITIES ii
PETITION FOR REHEARING 1
CONCLUSION 10

TABLES OF AUTHORITIES

Cases

Bowen v. Georgetown Univ. Hosp., 488 U.S. 204, 208 (1988) 8
Boyd v. U.S., 116 U.S. 616, 635 8
Caha v. U.S., 152 US 211 6
Connally v. General Construction Co., 269 U.S. 385, 391 (1926) 7
Department of Housing and Urban Renewal v. Rucker, 535 U.S. 125, 130-31 (2002) 5
Hughes v. U.S., 953 F.2d 531, 542-43 (9th Cir. 1991) 4
INS v. Chadha, 462 U.S. 919, 953 n.16, 955 n.19 (1983) .. 8
Lanzetta v. New Jersey, 306 U.S. 451, 453 (1939) 7
Miranda vs. Arizona, 384 U.S. 436 1
Papachristou v. City of Jacksonville, 405 U.S. 156, 162 (1972) 7
U.S. v. Alvarez-Sanchez, 511 U.S. 350, 357 (1994) 5
U.S. v. Gonzales, 520 U.S. 1, 4-6 (1997) 5
U.S. v. Monsanto, 491 U.S. 600, 607-611 and (syllabus) (1989) 5

Statutes

26 USC § 6700 3
26 USC § 6701 3
26 USC § 7401 3
26 USC § 7402 3
26 USC § 7408 3
26 USC § 7621 6
48 USC § 1397 9
48 USC § 1421i 9
48 USC § 1801 9

Other Authorities

Covenant to Establish Commonwealth of Northern Mariana Islands, Article VI, revenue and taxation, § 601 9
Rule 44.1 1

PETITION FOR REHEARING

Pursuant to Rule 44.1, Petitioner respectfully petitions this Court for rehearing.

I.

The principles upon which this Court has functioned for over 200+ years are the rule of law, the principles of law, and the honorable interpretation of the law which protects the rights of American Citizens from any attempts of the government to violate said rights.

While Petitioner agrees that a Writ of Certiorari is "not a matter of right but of judicial discretion", Petitioner's substantive rights to due process, property, liberty, cited violations of his substantive rights as protected by the Constitution and oaths of office to uphold the Constitution taken by the Judges of this Court and the Appellate Court, tend to lessen the discretionary nature of the Writ of Certiorari.

This Court in *Miranda vs. Arizona*, 384 U.S. 436 ruled:

> "Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them."

Therefore, the rights of American Citizens supersede any rules or legislation which might allegedly give this Court leave to deny a Citizen their substantive rights.

Petitioner's constitutionally protected rights to due process, to property and to liberty are not dependant upon the nature of the Writ of Certiorari filed by the Petitioner (or any other writ whether or not created by act of Congress), but rather his rights are dependent/protected by the nature of the Constitution and the laws of the United States and the nature of the Appellate Court and government's disregard/violations of said rights.

Petitioner has a high level of confidence in this Court and in its desire to follow the rule of law. However, if this Court refuses to address the issue of law so clearly spelled out in the subject Petition, there is risk of substantial

negative fallout from said refusal. For example, negative fallout could very well include:

1. Judges throughout the United States will determine from this Court's actions or omissions that the Courts can now freely ignore with impunity the clear mandates of the law when it comes to issues related to due process, liberty and income tax revenues;

2. The Department of Justice ("DOJ") can continue to unlawfully and with impunity prosecute Citizens under laws which have not been "expressly" extended by Congress to the several 50 union states ("several states") finding little resistance by the Courts its actions which unlawfully destroy thousands of American Citizens and their families each year. Therefore, the Courts will never order Respondent to prove jurisdiction once challenged by the Citizen—a direct violation of the Citizen's rights to due process;

3. American Citizens cannot possibly be constitutionally represented in Congress any longer since the laws which Congress makes can be ignored by the Judicial and Executive branches of our government with impunity and without remedy to the Citizens;

4. Respect for United States law (and law in general) will diminish as Citizens learn by experience that the Courts only follow the law when it suits them and the Courts will not follow the law when it comes to issues of due process and taxes related thereto. In other words, one's due process rights are guaranteed as long as it does not affect the Nation's revenue;

5. Citizens now must read the law written in plain English and speculate that what the English language clearly tells them the law means is not sufficient to prevent them from being arrested, convicted and incarcerated by the DOJ and the Courts which will not follow the rule of law and will not apply the law equally and without impartiality, which is their duty;

6. More importantly, this Nation will cease to be a land governed by the law but rather it will be governed by men and women who choose to ignore the law

when it suits them or when the issues involve any form of National revenue regardless of how said law affects the Citizen's rights. Can this country be ruled by money and the insatiable appetite of the government for unlimited amounts of the Citizen's property without lawful authority (See 4 USC § 72) and without regard to the Citizen's rights being violated in the process?

Petitioner's Rights Denied

If this Petition for Rehearing is denied, the following substantive rights will effectively be denied to Petitioner and countless other Americans:

1. The Appellate Court's complete silence regarding Petitioner's challenge to the United States District Court's ("USDC") and Respondent's jurisdiction has resulted in the Appellate Court's denial of Petitioner substantive rights to due process with impunity. Jurisdiction has been properly challenged by Petitioner and the Court ignored it completely! And without any explanation as to how Petitioner has misinterpreted the plain language of 4 USC § 72. That silence and omission gives rise to an equitable estoppel, because the Court's officers are "public officers" and fiduciaries of the public, and their silence is incompatible with their oath and their fiduciary duty as "public officers" charged with protecting the public.

2. 26 USC §§ 7402 and 7408[1] allegedly grants the Secretary authority for injunctive relief without Respondent ever having to prove that Congress has "expressly" authorized the Secretary to administer and enforce internal revenue laws ("Act") within the several states pursuant to 4 USC § 72. Section 72 is a codification of Petitioner's rights—regarding the limitations of government—as protected by the Constitu-

[1] Sections 7401 and 7408 authorize an injunction to the Secretary to enforce internal revenue laws against Petitioner only if Congress has "expressly" extended the authority of the Secretary and IRC §§ 6700, 6701, 7402 and 7408 to the several states by law. (See 4 USC § 72).

tion and yet, Petitioner cannot avail himself of said protection when it comes to issues even remotely related to taxes. Murders, rapists, and even child molester's rights can be protected by the Constitution and the Courts but Petitioner is completely without remedy and protection by the Courts instituted, in part, for the very purpose of protecting the Citizen's rights (due process and liberty being two of those rights).

3. Petitioner has a substantive right not to be punished on the basis of a secret jurisdiction that no one will talk about (See the Conclusion herein)! Neither this Court (to date), Respondent, the Appellate Courts, the district Courts nor a host of U.S. Attorneys or IRS Agents will talk about 4 USC § 72. Neither will they show one law by which Congress has "expressly" authorized the Secretary to Act in the several states pursuant to 4 USC § 72? Not only is this "secret" jurisdiction repugnant to the Constitution, it flies in the face of all moral decency which should be afforded to the "People" who granted these public servants the authority to occupy their offices of trust in the first place.

4. Petitioner has a right to have the *Hughes v. U.S.*, 953 F.2d 531, 542-43 (9th Cir. 1991)[2] opinion reviewed when it states, in error, that 4 USC § 72 does not "foreclose" the IRS from acting outside Washington, DC thereby contradicting the very purpose of 4 USC § 72 to limit where government offices can Act. 26 USC § 72 is about WHERE an office can exercise it authority NOT WHAT authority it can exercise.

5. Petitioner has the right to read and understand the law as written in plain English without being told that what he reads cannot possibly mean what the plainly stated law says when interpreted according to the strict rules of statutory construction. This is tantamount to the family sitting around the dinner table when Dad suddenly falls on the floor passed out drunk and Mom says, don't worry everything is alright! Is it

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[2] See Appendix C of the original petition.

the goal of American Jurisprudence to convince Americans that they don't know what they know? If the law cannot mean what it plainly says, how can Citizens exercise their right to order their lives according to the law and at the same time have some assurances that they will not be maliciously prosecuted for doing what the law clearly allows them to do or not to do?

6. The currency of this Court for over 200+ years has been consistent rulings rendered and its courage to reverse rulings which were inconsistent with the principles of law and the Constitution; once it was brought to the Court's attention. It is these consistent rulings of the Court that preserve its honor. When this Court consistently rules in 4 cases[3] that the term "any property" means all inclusively "all property", unless Congress specifically excludes certain property, and then, when it comes to tax related cases, it refuses to rule at all, then Petitioner's rights to due process have been grossly denied and violated leaving him with no recourse and with no protection afforded him by the Constitution and United States law. If a right is not protected by the Court of last resort, then does one effectively have that right? If this Court of last resort will not check said violations and rule on the merits of the issues as it relates to United States law which have not been reviewed by this Court or any Court since said laws were written, what institution of government is left to protect Petitioner's rights? To whom can Petitioner turn to help him understand why the plain language of the law does not mean what is says? To whom can Petitioner turn for the protection he has been guaranteed by the Constitution and United States law? Doesn't Petitioner have a substantive right for said protection by this Court when no other Court will

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[3] See *U.S. v. Monsanto*, 491 U.S. 600, 607-611 and (syllabus) (1989); *U.S. v. Alvarez-Sanchez*, 511 U.S. 350, 357 (1994); *U.S. v. Gonzales*, 520 U.S. 1, 4-6 (1997); *Department of Housing and Urban Renewal v. Rucker*, 535 U.S. 125, 130-31 (2002) citing *Gonzalez* and *Monsanto* in the original Petition.

protect said rights? **How is it that this Court can, through its unwillingness to deal with this violation of clearly written law, compel Petitioner to pay through taxation for protection that it refuses to render?**

7. The *Hughes* Court makes it appear that somehow 26 USC § 7621[4], "expressly" extends the authority of the office of Secretary to the several states and there is no evidence that the President, pursuant to 26 USC § 7621, has ever established internal revenue districts within the several states other than Customs Districts. Doesn't the American Citizen have a right to be told the truth and not be lied to by his government? Doesn't the Citizen have the right to know that there are no established internal revenue districts within the several states out of which the Secretary can lawfully administer and enforce internal revenue laws?

8. When Petitioner reads what this Court said in *Caha v. U.S.*, 152 US 211 that:

> "The laws of Congress in respect to those matters do not extend into the territorial limits of the States, but have force only in the District of Columbia, and other places that are within the exclusive jurisdiction of the national government." (Emphasis added)

And then he reads 4 USC § 72 which states:

> "All offices attached to the seat of government shall be exercised in the District of Columbia, and not elsewhere, except as otherwise expressly provided by law.",

is it unreasonable for Petitioner to conclude that Congress has NOT "expressly" authorized the Secretary to Act within the several states when over 40 U.S. Attorneys, a multitude of Federal District Judges and scores of IRS Agents have been asked for the law which so "expressly" extends the authority of the Secretary to the several states and NONE CAN PROVIDE EVEN

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[4] See Appendix B-5 of the original Petition.

ONE LAW? Doesn't Petitioner have the right to know the law which requires him to perform and isn't it a denial of Petitioner's right to due process for the Courts, U.S. Attorneys and IRS Agents to keep that information a secret? How can so many levels of the government keep said jurisdiction a secret and in so doing not be acting as an illegal R.I.C.O. Enterprise scheming together to fraudulently deny Petitioner and other Citizens their rights to due process, to property, and to liberty as protected by the Constitution?

9. The absence of judicial clarification[5] by the lower Courts and the Appellate Court's refusal, on two separate occasions, to decide the presence or absence of the law by which Congress has "expressly" granted leave to the Secretary to Act within the several states and the void for vagueness doctrine require and force Petitioner to speculate as to his duty with respect to the Secretary's authority within the several states pursuant to 26 USC and 4 USC § 72.[6] The consequences of said speculation, if Petitioner is wrong and the Courts refuse to correct his error and state what the law is, could result in criminal prosecution and prison for Petitioner (See the Conclusion herein), and untold damage to him and his family, when said damage could have been avoided by one Court addressing the issue and making public the "secret" jurisdiction or the lack thereof in accordance with the rule of law.

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[5] At no time have the lower courts addressed the issue of the Secretary's authority to Act in the several states, pursuant to 4 USC § 72.

[6] See *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972); *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939) ("**No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids**") (citations omitted); *Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926) ("**[A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law**") (citations omitted).

Doesn't Petitioner have the right to enjoy this kind of liberty?

10. This Court has stated that Citizens like Petitioner have a right to judicial review when it appears that an agency of the government has exceeded the authority grant of Congress (See *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988)) which stated "[i]t is axiomatic that an administrative agency's power to promulgate legislative regulations is limited to the authority delegated by Congress"; *INS v. Chadha*, 462 U.S. 919, 953 n.16, 955 n.19 (1983) providing that agency action "is always subject to check by the terms of the legislation that authorized it; and if that authority is exceeded it is open to judicial review" and "Congress ultimately controls administrative agencies in the legislation that creates them".

11. It is the duty of this Court and Petitioner has the right to expect this Court to protect his rights. *Boyd v. U.S.*, 116 U.S. 616, 635 states that "...it is the duty of the courts to be watchful for the constitutional rights of the citizens, and against stealthy encroachment thereon." This duty, as articulated by the *Boyd* Court, means that Citizens have a right to have their Courts protect their rights; notwithstanding the nature of the subject Writ of Certiorari.

12. Doesn't a Citizen have the right to call upon the Courts and the Judges of said Courts to honor their oaths of office and defend the Constitution and the rights of the People as protected thereby?

Therefore, irrespective of the nature of the Writ of Certiorari as a writ of right, Petitioner's rights as protected by the Constitution and United States law are under attack and this Court is constitutionally mandated to protect Petitioner's rights and the rights of other Americans who's rights are being daily violated by an agency which cannot prove, by admissible evidence in the record, that Congress has "expressly" authorized the Secretary to Act within the several states pursuant to 4 USC § 72.

Finally, there is evidence that Congress does indeed follow the mandates of 4 USC § 72 even in territories or insular possessions over which it has exclusive legislative jurisdiction. For example, Petitioner cites examples of how Congress does "expressly" authorize the Secretary to Act in other areas outside "the District of Columbia, and not elsewhere" in United States law:

> 48 USC § 1397. Income tax laws of United States in force; payment of proceeds; levy of surtax on all taxpayers
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> "**The income-tax laws in force in the United States of America and those which may hereafter be enacted shall be held to be likewise in force in the Virgin Islands of the United States**, except that..."

and

> 48 USC § 1421i. Income tax
>
> Applicability of Federal laws; separate tax
>
> "**The income-tax laws in force in the United States of America and those which may hereafter be enacted shall be held to be likewise in force in Guam**: Provided..."

and

> 48 USC § 1801. Approval of **Covenant to Establish Commonwealth of Northern Mariana Islands**
>
> "That the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, the text of which is as follows [note to this section], **is hereby approved**."

and said Covenant which was approved by Congress states in part:

> "Article VI
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> "revenue and taxation
>
> "Section 601. (a) **The income tax laws in force in the United States will come into force in the Northern Mariana Islands as a local territorial income tax...in the same manner as those laws are in force in Guam**."

Under the NOTES under References in Text it states:

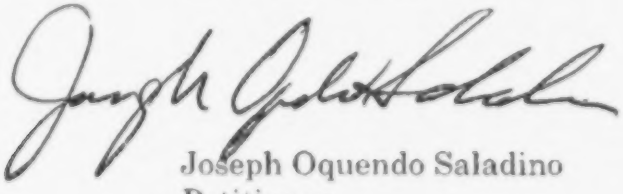
"The income-tax laws in force in the United States of America, referred to in text, are classified to **Title 26, Internal Revenue Code**."

CONCLUSION

As this Court receives this Petition, Respondent is seeking to indict Petitioner with regard to laws Congress has not "expressly" extended to the several states. The issues herein and in the subject Petition are vital to Petitioner's protection from Respondent's lack of lawful authority in the several states. Unless this Court intervenes, a great injustice will be perpetrated against Petitioner and other American Citizens under color of law within the several states; a geographical area over which Congress has NOT "expressly" authorized the Secretary to Act pursuant to 4 USC § 72.

With the deepest respect and highest regard for the honorable institution of this Supreme Court of the United States and the duty it has as a Court of last resort to protect the substantive rights of this Petitioner; and for the reasons set forth herein and in the subject Writ of Certiorari, Petitioner urges this Court to grant this Petition for rehearing and to vacate the October 30, 2006 denial of the subject Writ of Certiorari.

Respectfully submitted,

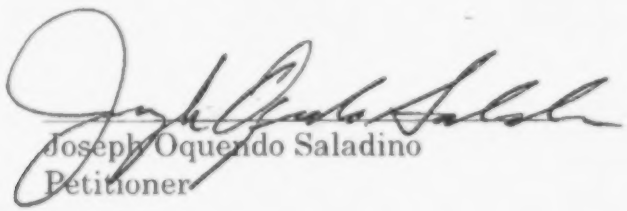


Joseph Oquendo Saladino
Petitioner

CERTIFICATE OF PETITIONER

I hereby certify that:

- The grounds of this petition are limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented.
- The Petition is presented in good faith and not for delay.



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